

LOCAL REGULATION OF "INLAND
WETLANDS" IN CONNECTICUT
A PROTOTYPE "MANAGEMENT PROGRAM"
UNDER THE COASTAL ZONE MANAGEMENT
ACT OF 1972

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Introduction

This study explores the history of the process of adopting local inland wetlands regulations in Connecticut, beginning with the regulatory situation as it existed prior to the adoption of the Inland Wetlands and Water Courses Act. It explores the legislative history of that statute and examines the implementation of the law by the Department of Environmental Protection and the process of adoption of local regulations by Connecticut municipalities. It discusses the nature of state review of municipal regulations and permit actions and the technical support provided by the Department of Environmental Protection. It attempts to analyze strengths and weaknesses of local regulations of inland wetlands and includes a general review of the inland wetlands as a prototype for a "management program" under the Coastal Zone Management Act of 1972. The study is divided into two parts. Part I discusses the regulation of inland wetlands in Connecticut from an historical perspective and explores the relationship, from a legal and practical standpoint, created by the statute between the Connecticut Department of Environmental Protection and local municipalities. Part II deals with the administration of the program by municipalities, including their perception of the state's role and the adequacy of past performance of that role.

PART I

LEGISLATIVE AND ADMINISTRATIVE HISTORY OF THE REGULATIONS OF INLAND WETLANDS AND WATER COURSES BY MUNICIPAL REGULATIONS AND THE RELATIONSHIP OF SUCH A PROTOTYPE TO THE REQUIREMENTS OF THE COASTAL ZONE MANAGEMENT ACT OF 1972.

Legislative History of Inland Wetlands and Water Courses Act

Authority for the regulation of inland wetlands and water courses by Connecticut municipal agencies rests upon the Inland Wetlands and Water Courses Act, a statute enacted by the Connecticut General Assembly in 1972.¹ Prior to the enactment of this law, efforts by Connecticut towns to regulate the use and development of wetlands were founded upon the general zoning enabling act.² In two cases, the Connecticut Supreme Court struck down disapprovals by local zoning agencies of applications by property owners to develop wetlands on the ground that the zoning action constituted an unconstitutional taking of property without compensation;³ however, in neither case did the Court conclude that the regulation of wetlands for the purpose of their preservation was beyond the statutory authority granted to local zoning commissions by the general zoning enabling act. Prior to the enactment of the Inland Wetlands and Water Courses Act, the state exercised, as it does today, a number of regulatory functions with respect to wetlands. The State Department of Environmental Protection, as successor to the Water Resources Commission, regulates the construction and modification of dams,⁴ construction within established channel encroachment lines,⁵ dredging, filling and construction within the tidal, coastal and navigable waters of the state,⁶ and discharges into the waters of the state.⁷ The constitutionality of the general regulatory authority of the state exercised in the subject areas was never successfully challenged in the courts and specific application of the police power to regulate coastal wetlands and flood-prone areas has been sustained by the Connecticut Supreme Court.⁸

Enactment by the General Assembly of the Inland Wetlands and Water Courses Act was preceded by the adoption, in 1969, of Public Act 169, regulating the tidal wetlands.⁹ The tidal wetlands law, unlike the Inland Wetlands and Water Courses Act, comprehends direct regulation by the state of a narrow classification

of land defined by statute and depicted on maps prepared and filed after appropriate procedures in the land records of the towns where the land is located. The permit process has been conducted by the state, initially by the Water Resources Commission, and, after the creation of the Department of Environmental Protection, by that agency.¹⁰ Municipal involvement or action in the regulation of coastal wetlands is not comprehended by this statute, the constitutionality of which has been upheld by the Connecticut Supreme Court.¹¹

The Inland Wetlands and Water Courses Act is very different from the tidal wetlands law and the zoning enabling act. Whereas the coastal wetlands law creates a system of direct state participation in the permit granting process and establishes general state standards to govern that process, the inland wetlands law involves the municipality in the adoption of regulations and the permit process itself. Whereas the municipal zoning enabling act gives Connecticut towns the opportunity, by adoption of the statute, to avail themselves of the power to regulate, which is expressed in the most general and all-inclusive terms, the inland wetlands law in effect required municipalities to adopt regulations for specified categories of land in a specific time frame or thereafter be subject to direct state regulation. A close analysis of the background of the Inland Wetlands and Water Courses Act is required if we are to understand the history of the adoption of the inland wetland regulations by the towns.

The immediate legislative precursor of the inland wetlands act was a bill introduced in the January, 1971, session of the General Assembly entitled "An Act Concerning the Establishment of a Scenic and Protected Rivers System for Connecticut." Rising largely out of the work and concern of a northwestern Connecticut group known as The Ecology League, this bill called for creation of a system of watersheds qualifying as "natural river areas," "pastoral river areas,"

or "partially developed river areas," and specified those river systems which qualified for inclusion in each category.¹² A new body, to be known as the River Commission, was directed to establish the geographical limits of the land subject to the statute. Administration was to be by the "office" of the Commissioner of Agriculture and Natural Resources.¹³ The bill was reported out favorably by the Joint Standing Committee on the Environment and passed the Senate on a voice vote.¹⁴ However, the bill failed of passage in the House.¹⁵ The issues which this bill brought to the attention of the legislators, and the narrowness of its defeat, brought to light concerns which clearly demanded legislative action and resulted in the formation of an ad hoc technical committee to address questions which had been raised about the scenic rivers bill and which ultimately led to the bill which became 1972 Public Act 155.

On January 11, 1972, the Joint Standing Committee on the Environment convened a hearing in regard to legislation on inland wetlands and heard from citizens demanding some form of regulation on the ground that there was no existing governmental authority to protect inland wetlands and water courses. Support was heard for strengthened local regulation as well as for a step-by-step regulation of particular wetlands by the newly-formed Department of Environmental Protection. While scientific information that was presented was of a general nature, there was testimony from ecologists, foresters and biologists regarding the role of wetlands within the natural system, particularly as related to water resources. Little was said about relating affirmative uses of wetlands to overall concepts of land use. The bill which became Public Act 155 was reported out favorably by the Committee.¹⁶

The bill passed the House¹⁷ and Senate¹⁸ with little difficulty. The only significant debate was on the floor of the House. Some legislators expressed

concern about the details of the Act, while favoring its general thrust and purpose. Some confusion centered on what the soil classifications mentioned in the legislation really meant and complained that the impact of the law was difficult to predict in the absence of complete soil maps. Concern was expressed about the degree of state participation in administering inland wetlands, and one legislator felt that the bill represented the first step toward state zoning. Concern was also expressed about the effect of a municipal permit denial the result of which would constitute an unconstitutional taking. Despite these reservations, the bill, as has been said, was enacted without legislative centering on such issues as: Providing funding for municipal participation in developing and administering regulations; creating a mechanism for a general analysis of the kinds of development and use which inland wetlands of various categories might support; the scope of judicial review of substantive decisions of wetland agencies (other than in regard to the "taking" issue); and encouragement of greater regional cooperation in regard to management of river basin systems. A more complete report of the legislative history of this bill is attached as Appendix A.

The history of the adoption of inland wetlands regulations by Connecticut municipalities cannot be addressed without considering the specific provisions of the Inland Wetlands and Water Courses Act. The basic design of the statute is to provide a process to balance the need for economic growth and land use against the need, declared by the Legislature, "to protect [the state's] environment and ecology ..."¹⁹ The process envisions shared responsibilities by the state and local governments. Local governments are authorized to act through their legislative bodies to establish a board or commission authorized to promulgate regulations to protect wetlands and water courses in conformity with regulations adopted by the Commissioner of Environmental Protection.²⁰ The Act, as amended, went on to

provide that any municipality which had not so acted by June 30, 1974, should be subject to regulation by the Commissioner of Environmental Protection.²¹

From a legal perspective, two aspects of critical importance in the application of the police power, or regulatory authority, of government are the definition of the subject matter to be regulated and the substantive provisions of the rules which are to govern the future of the subject matter. Under the state zoning enabling act, both the identification of districts regulated and the substance of the regulations themselves are left to local zoning commissions, and towns are free to adopt zoning or not, as they see fit.²² However, the Inland Wetlands and Water Courses Act comprehends no such broad latitude for the towns. The subject matter of the regulations is "wetlands" and "water courses" as defined in the statute. "Wetlands" are defined as land (other than that regulated by the coastal wetlands act)

"which consists of any of the soil types designated as poorly drained, very poorly drained, alluvial, and flood plain by the National Cooperative Soils Survey, as may be amended from time to time, of the Soil Conservation Service of the United States Department of Agriculture; ..."23

"Water Courses" are defined as

"rivers, streams, brooks, waterways, lakes, ponds, marshes, swamps, bogs and all other bodies of water, natural or artificial, public or private, which are contained within, flow through or border upon this state or any portion thereof, ..."

which are not regulated under the coastal wetlands law.²⁴ The subject matter is thus defined by statute as land having certain physical characteristics; these characteristics exist as a matter of fact and not as the result of an administrative determination either by the Commissioner of Environmental Protection or the municipality, although the Commissioner of Environmental Protection is directed to prepare an inventory of wetlands and municipal inland wetlands agencies are directed by the statute to provide through regulation "for the manner in which"

the boundaries of inland wetlands areas are to be established and changed.²⁵

Furthermore, the substance of regulations adopted by municipal inland wetlands agencies is directed and circumscribed both by the statute itself and by rule-making actions by the Commissioner of Environmental Protection which are authorized by the law. The law specifically defines "regulated activities" as the sole uses for which a permit is required. It allows certain "operations and uses" as a matter of right and allows other "operations and uses" as a "non-regulated use" if they do not disturb the "natural and indigenous character of the land ..."²⁶ So, also, regulations adopted by municipal wetland agencies must be "in conformity with the regulations promulgated by the Commissioner" of Environmental Protection.²⁷ In adopting those regulations, the Commissioner himself is, of course, governed by the provisions of the Inland Wetlands and Water Courses Act.

The process which local inland wetlands agencies must follow in adopting regulations is prescribed by statute and includes provision for a public hearing on proposed regulations with appropriate notice.²⁸ However, it is clear that in adopting regulations and the designation of boundaries of inland wetlands districts, the municipal agency is acting in a legislative capacity for the municipality similar to that of a zoning commission adopting zoning regulations.

The key to the control which the inland wetlands act exerts over specific property lies in the statutory directive that after the adoption of regulations, no regulated activity may be conducted on an inland wetland without a permit.²⁹ Any person proposing to conduct a regulated activity on a wetland is required to file an application with the inland wetlands agency which contains such information as the agency may prescribe. The agency is required to hold a public hearing if in fact a regulated activity is involved (that is, if the activity is not a use permitted as of right or if it constitutes a "non-regulated use" which does not

disturb the natural character of the land; this initial determination is evidently to be made by the agency itself). Depending upon its findings, the agency may grant, deny or limit the permit, provided that, in so doing, it considers stipulated factors. These are:

- "(a) The environmental impact of the proposed action;
- (b) The alternatives to the proposed action;
- (c) The relationship between short-term uses of the environment and the maintenance and enhancement of long-term productivity;
- (d) Irreversible and irretrievable commitments of resources which would be involved in the proposed activity;
- (e) The character and degree of injury to, or interference with, safety, health or the reasonable use of property which is caused or threatened; and
- (f) The suitability or unsuitability of such activity to the area for which it is proposed."³⁰

Any "aggrieved" person may appeal from "any regulation, order, decision or action" within fifteen days after publication of the action to the Court of Common Pleas.³¹ If upon appeal the court should find that the action appealed from constitutes the equivalent of a taking without compensation, the court is directed to set aside the action or to "modify the action so that it does not constitute a taking," in both of which instances the court is directed to remand the matter to the inland wetland agency for action consistent with the court's decision.³²

It is worthy of note that the Commissioner of Environmental Protection is required to receive no notice of the filing of an application for a permit, is not required to conduct any review of an application for a permit, and is not required to be notified of any action taken on a permit. Thus, the initial role of the Commissioner would appear to be confined to the period before regulations are adopted by the municipal wetlands agency, and it should be noted that his

duties include the preparation of an "inventory or index of the wetlands and water courses in such form, including pictorial representations" as he might deem best to carry out the purposes of the statute.³³ The permit process, as we have seen, is primarily the responsibility of the local wetlands agency. However, the Commissioner also has significant ongoing responsibilities which, it would seem, would include an overview of the effectiveness of the permit granting process itself. He is, for example, required to "exercise general supervision of the administration and enforcement" of the statute.³⁴ He is also charged to "promulgate such regulations as are necessary to protect the wetlands or water courses or any of them individually or collectively ..."³⁵ Furthermore, the Commissioner is charged with the responsibility of advising, consulting and cooperating with municipalities, and others, in furtherance of the purposes of the Act.³⁶

Before proceeding to discuss the implementation of the Inland Wetlands and Water Courses Act by the Department of Environmental Protection and, in due course, by municipal inland wetlands agencies, several facts might be pointed out which provide a context for the administration of the new, complex and innovative legislation, some of which are obvious and others of which may seem not quite so self-evident:

-- Connecticut is composed, politically, of 169 towns embracing approximately 3,000,000 acres of land and containing about the same number of inhabitants. The towns are notably diverse in their resources, attitudes, and governmental proficiency. They range in sophistication from what might be expected of wealthy suburban communities oriented toward New York City to rural villages rooted in old New England. The process of land use regulation, conducted by boards and commissions of a volunteer lay membership, has been no more (and probably no less) effective than classical zoning as practiced in any other state, and

in many communities, if not most, functions without the benefit of professional staff. Concepts of inland wetlands regulation thus came to towns not notably well prepared to deal with the new challenge.

-- At the time of the enactment of the inland wetlands law, the Department of Environmental Protection of the State of Connecticut was newly formed. It was the result of an extensive reorganization of state government involving the elimination of numerous boards and commissions which had theretofore dealt with the regulation of water and air pollution, the management of state-owned recreational resources and like subjects. Authority was concentrated in the hands of a Commissioner appointed by the Governor. The organization increased accountability while at the same time weakening the citizen contact which the old advisory boards and commissions had supplied.

-- The Department of Environmental Protection had no experience in the regulation of land use as such and found the comprehensive inland wetlands program somewhat anomalous in the context of its other responsibilities. It had, through its predecessor component, the Water Resources Commission, experience in the permit process relating to dredging and construction in tidal waters, and the functions of the former Commissioner of Agriculture and Natural Resources in respect to the coastal wetlands act devolved upon the new Commissioner of Environmental Protection. The land use aspects of the water and air pollution control programs had not yet been well perceived, it may fairly be said, by administrators preoccupied with keeping up with fast-moving federal programs, and land use policy in general was seen to be the responsibility of the local municipalities, assisted by regional planning agencies and the Office of State Planning. The inland wetlands program thus found itself to be something of an orphan, or at least an anomaly, in terms of the busy, ongoing, newly organized Department of Environmental Protection.

-- For their part, Connecticut towns by and large were not accustomed to organizing land use control strategies around particular natural resources. Perceptions of land use policy proceeded from the basis of classical Euclidian zoning and not, for the most part, from more contemporary notions that such policies should proceed from an awareness of, if not be totally determined by, capacities of natural systems. The legislative action thus, it may be said, preceded a general "grass roots" awareness of the importance of safeguarding wetlands and water courses for the benefit of the general welfare.

-- Funding and staff support for the responsibilities of the Department of Environmental Protection and those of the municipalities were (and are) extremely limited. The Inland Wetlands and Water Courses Act carried with it no appropriation enabling its administration and, indeed, there was no formal fiscal analysis of its effect either upon state government or upon towns who would be called upon to administer it. No funds were provided for technical aid to municipalities and there was seemingly no awareness of the offloading by the state of administrative costs upon the towns. As will be pointed out, technical and legal support to the municipalities in the early starting up stages of the program was difficult to come by and new agencies, composed entirely of inexperienced citizens, understandably found the going hard.

Response by the Department of Environmental Protection
and Adoption of Local Inland Wetlands Regulations

Signature by Governor Thomas J. Meskill of Public Act 155, May 19, 1972, set in motion efforts by the Department of Environmental Protection to deal with its responsibilities under the statute. These were seen at the outset principally as the preparation of regulations to govern the conduct of the Department and guide

the towns and preparation of the technical information, in the form of maps, needed to delineate wetland boundaries. The task was assigned to a unit responsible for water (other than pollution control and discharge permits) and water-related land resources. This unit was also responsible for the administration of a coastal wetlands program, stream encroachment lines, dam construction and replacement, and like diverse responsibilities. The newly organized Department, which was struggling to catch up with its duties in many areas, was initially unable to address with existing staff the task of evolving regulations and turned to an outside consultant for baseline work. Initially, the thought was to develop informal "guidelines" for municipalities, a concept which was later abandoned in favor of the adoption of specific regulations. The preparation of these regulations went on for a period of months. A first draft was not completed until Spring of 1973, and a final draft was not promulgated until March of 1974.³⁷ Development of the regulations primarily was an "in house" operation with minimal formal public input. Staff members included an environmental analyst and a number of lawyers who worked with the assistance of the outside consultant.³⁸ However, on an informal basis, staff received a great deal of citizen comment during the drafting period because of frequent presentations before municipal bodies wishing to be informed about the new law and how to comply with it. In the course of this experience, concerns and problems experienced by municipalities were made known to DEP staff. While this exercise resulted in some infusion of public viewpoints, the development of regulations, as has been noted, can scarcely be viewed as an upwelling from concerned communities but rather is properly seen as an attempt by the towns to comply with directives imposed by the General Assembly and the DEP.

Initial contact between the municipalities and the Department of Environmental Protection, at least on a formal basis, typically occurred after the action

by the town legislative body creating the inland wetland agency and the formation of that agency. Upon request, DEP staff would make a presentation which included a slide presentation on the importance of wetlands-centered land regulation, a discussion of the legal implications of the new statute and a presentation of information relating to soil surveys and the technical aspects of how to adopt regulations. During this process at least three full time DEP employees were involved in these meetings, which occurred several times a week, and these staff members would "borrow" resources from other state employees to fulfill this large commitment of time, knowledge and energy.

After this contact, those towns minded to do so would proceed to draft regulations; for the most part regulations followed models suggested by the Department or by the Connecticut Inland Wetlands Project, a foundation-funded private effort supportive of municipal efforts to deal constructively with the new legislation. The model regulation suggested by DEP is set forth as Appendix B. A few municipalities drafted their own regulations without reference to models. Proposed regulations were submitted to the Department of Environmental Protection, and its review required the attention of one attorney and one administrative staff person. DEP comments ranged from nothing (in the case of a previously approved model) to twenty or more specific points requiring further attention by the municipality. One perception of this process was that municipalities eager to escape state regulations were quick to adopt regulations with little consideration of specific town requirements or administrative implications of the action that was being taken.³⁹ Further DEP staff participation occurred at the public hearing required prior to adoption of regulations, at which legal and administrative questions raised by members of the general public were dealt with.

As part of the adoption of regulations by local inland wetlands agencies,

in the great majority of cases maps constituting an inventory of regulated wetlands were included in the regulations themselves. These maps were supplied by the Commissioner of Environmental Protection in the exercise of his responsibility to "inventory or index" the wetlands and water courses.⁴⁰ The DEP inventory maps were based upon data supplied by the National Cooperative Soil Survey of the Soil Conservation Service of the United States Department of Agriculture, as prescribed by statute.⁴¹ At the time of the preparation of this inventory, detailed soil surveys had been prepared for only about seventy (70) percent of the state, and the surveys themselves at best constitute what has been called a "generalization of data."⁴²

The Town of East Lyme was the first Connecticut municipality to adopt inland wetlands regulations, and by the time the deadline of July 1, 1974 (as extended by one statutory amendment) had been reached, all but 54 of the 169 towns had adopted regulations. Subsequent to that time, additional towns have adopted regulations, so that as of December 3, 1975, only 28 towns still have not adopted municipal regulations and thus are subject to direct state control. Of the inland wetlands agencies which have been designated, twelve are town planning and zoning commissions or town zoning commissions, three are local legislative bodies; about one-half of the remainder is composed of conservation commissions, and the remaining fifty (50) percent is made up of newly created agencies. According to one informant, at least some towns, having adopted regulations, have inquired whether they can repeal them in order to become subject to state regulation.⁴³

Administrative regulations adopted by the Commissioner of Environmental Protection refine and articulate the relationship between the DEP and the inland wetland agencies in towns adopting regulations and set out the substantive and procedural requirements applicable to the permit process conducted by the Commissioner of Environmental Protection for towns not adopting regulations.⁴⁴ The

text of the regulations is set forth as Appendix C. Tracking the statute,⁴⁵ the regulations provide that local inland wetlands agencies (or the Commissioner, in the case of towns which have not adopted regulations) shall regulate only those activities which remove material from, deposit material in, obstruct, "construct" (evidently meaning include construction within), alter or pollute inland wetlands and water courses.⁴⁶ The definition of permitted uses and non-regulated uses follows the statutory language, but the regulations do contain a definition of what is meant by disturbance of the "natural and indigenous character of the land" in the case of permitted non-regulated uses:

"Disturbing the natural and indigenous character of the land" means that the activity will significantly disturb the inland wetland or water course by reason of removal or deposition of material, will cause the alteration or obstruction of water flow, or will result in the pollution of the wetland or water course."⁴⁷

The regulations also make clear a statutory interpretation by the Commissioner that the inland wetlands law was not intended to override jurisdictions previously exercised by him in certain areas. Regulatory matters excluded from consideration by the inland wetlands agency are:

(1) Construction or modification of any dam, pursuant to Sections 25-110 and 25-112 of the General Statutes, as amended;

(2) Construction or placement of any obstruction within channel encroachment lines, pursuant to Sections 26-4a to g of the General Statutes, as amended;

(3) Construction or placement of any structure or obstruction within tidal, coastal and navigable waters, pursuant to Sections 25-7b to e of the General Statutes, as amended;

(4) Diversion of water for public and domestic use, pursuant to Sections 25-8a to e of the General Statutes, as amended;

(5) Discharges into waters of the state, pursuant to Section 25-54i of the General Statutes, as amended."⁴⁸

Since the statute provides that the Commissioner, in regulating, licensing and enforcing the provisions of the inland wetlands law, shall take into consideration certain specified factors, the regulations provide an extensive definition of each of those factors which reaches well beyond the specific statutory language. These factors include:

"(i) The environmental impact of the proposed action, including the effects of the inland wetland's and water course's natural capacity to support desirable biological life, to prevent flooding, to supply water, to control sediment, to facilitate drainage, and to promote public health and safety.

(ii) The alternatives to the proposed action including a consideration of alternatives which might enhance environmental quality or have a less detrimental effect, and which could feasibly attain the basic objectives of the activity. This should include but is not limited to the alternative of taking no action, or postponing action pending further study; the alternative of requiring actions of different nature which would provide similar benefits with different environmental impacts, such as using a different location for the activity.

(iii) The relationship between the short-term uses of the environment and the maintenance and enhancement of long-term productivity, including consideration of the extent to which the proposed activity involves trade-offs between short-term environmental gains at the expense of long-term losses, or vice versa, and consideration of the extent to which the proposed action forecloses future options.

(iv) Irreversible and irretrievable commitments of resources which would be involved in the proposed activity. This requires recognition that the inland wetlands and water courses of the State of Connecticut are an indispensable and irreplaceable but fragile natural resource, and that these areas may be irreversibly destroyed by deposition, filling, and removal of material, by the diversion or obstruction of waterflow, and by the erection of structures and other uses.

(v) The character and degree of injury to, or interference with, safety, health, or the reasonable use of property which would be caused or threatened. This includes recognition of potential damage from erosion, turbidity, or siltation, loss of fish and other beneficial aquatic organisms, wildlife and vegetation; the dangers of flooding and pollution; and destruction of the economic, aesthetic, recreational and other public and private uses and values of wetlands and water courses.

(vi) The suitability of such action to the area for which it is proposed. This requires the agency to balance the need for the economic growth of the state and the use of its land, with the need to protect its environment and ecology for the people of the state and the benefit of generations yet unborn."⁴⁹

While the section of the regulations quoted applies to permit actions by the Commissioner, the language supplies a useful gloss for the application of the defined phrases by local inland wetlands agencies. Other provisions of the regulations applicable to the permit procedures by the Commissioner in towns which have not adopted regulations include a listing of the types of information which shall be included in a permit application deemed to be complete, which again, provides useful guidance to local inland wetlands agencies creating their own procedures.⁵⁰

As has been pointed out, the role of the Department of Environmental Protection during the period prior to June 30, 1974, primarily involved assistance to municipalities in the adoption of inland wetlands regulations, including the preparation of a wetlands inventory mandated by the statute. After that date, the effort of DEP personnel assigned to inland wetlands shifted to three areas: Providing technical support to towns administering their own inland wetlands programs; conducting DEP's own permit program for towns which had not adopted regulations; and reviewing regulations for towns which had not made the June 30, 1974, deadline and subsequently wished to adopt them.⁵¹ It is beyond the scope of this study to discuss the permit process conducted by the Department of Environmental Protection for towns without their own regulations, but an enlightening report describing this program is attached as Appendix D. There has been a very active call upon the DEP for assistance in connection with the inland wetlands program.⁵² It should again be noted that the statute requires the Commissioner not only to exercise general supervision of administration and enforcement but also to:

"Advise, consult and cooperate with other agencies of the state, the federal government, other states and with persons and municipalities in furtherance of the purposes of said section;"

and

"Encourage, participate in or conduct studies, investigations, research and demonstrations, and collect and disseminate information, relating to the purposes of said sections; ..."53

Typical town requests have involved the analysis of applications in order to determine the type of information that should be required by an agency, but towns have also requested inspection of specific sites and reactions to specific proposals. Towns uncertain about legal technicalities of the regulations or the statute and reluctant to call upon town counsel, for fiscal or other reasons, have also sought general legal advice from the Department of Environmental Protection.

To meet these demands, the small inland wetlands staff presently consists of an acting chief with a designation of environmental analyst, two other environmental analysts, one of whom has a background in biology, a fourth person with a designation of Maintainer I and a secretary. To the extent that experts assigned to other areas of the Department have been available when specifically needed (for example, hydrologists or geologists), they have been borrowed for specific tasks. The small in-house legal capability which the Department possessed at the outset of the administration of the inland wetlands act was of great assistance, not only in drafting departmental and model regulations, but also in responding to specific requests from towns. This staff has now been eliminated. Other staff reductions resulting from the present fiscal situation in the state have further curtailed the ability of the Department to respond to municipal needs.

In connection with the municipal program, it is of great importance to

stress that the Department of Environmental Protection, despite the statutory requirement that the Commissioner "exercise general supervision of the administration and enforcement" of the act⁵⁴ does not review the granting, conditional granting or denial of permits by the municipal agencies in specific cases. Indeed, the statute does not require that the inland wetlands agency provide notice to the Commissioner of such actions; the permit process is entirely within the control of the town once regulations have been adopted. Moreover, the Department of Environmental Protection has not conducted, and does not conduct, any ongoing audit of the effectiveness of the municipal programs in carrying out the purposes of the statute. The Commissioner is required to receive by reports from the municipality notice of all "enforcement activities undertaken" by the municipality and all "appeals involving" the municipality.⁵⁵ Presumably, in the event that the Commissioner were "aggrieved" by any reported action, he could appeal to the Court of Common Pleas under Section 22a-43 of the statutes or, perhaps, under other sections of the statutes as well; however, to date no such appeal has been taken.

It seems unnecessary to add that to the extent the capacity of the Department of Environmental Protection to provide technical advice and assistance to local inland wetlands agencies is curtailed, for fiscal, policy or any other reasons, the ability of the local agencies, particularly those with limited staff and funds, effectively to administer the provisions of the inland wetlands act is limited. If the supervising state agency cannot or will not carry out its responsibilities, an essential component evidently envisioned by the Legislature is removed from the regulatory system, and to the extent that the towns are unable to fill the gap administration of the law suffers.

Local Inland Wetlands and Coastal Zone Management Act

Does the Connecticut Inland Wetlands and Water Courses Act provide a

prototype for coastal management under the Federal Coastal Zone Management Act of 1972?⁵⁶

To return to fundamentals, the application of the police power to the regulation of land use entails establishing the subject matter to be regulated, adopting the rules which are to determine the future of the subject matter and providing for the administration of the regulations, since no law or administrative rule is self-executing. These components can be supplied by the legislature, by administrative action authorized by the legislature, or by action by a governmental unit below the state level after appropriate delegation of the police power by the legislature, as in the case of zoning enabling acts.

As we have seen, the Connecticut inland wetlands law includes a legislative determination, which is highly precise, identifying the subject matter to be regulated ("inland wetlands" and "water courses"); left to the administrator, the Commissioner of Environmental Protection, is only the non-discretionary act of depicting the subject matter on the "inventory." The precise provisions of the rules which are to determine the future of the subject matter are not spelled out exactly in the Connecticut legislation, but there is a degree of circumscription around rulemaking in the sense that specific activities (and only these) are considered "regulated activities," specific uses are permitted by statute as a matter of right, and certain other uses are not subject to regulation if a preliminary finding is made that they "do not disturb the natural and indigenous character of the land ..."⁵⁷ The legislature made these determinations, it is important to note, rather than leaving them to the discretion of the Commissioner of Environmental Protection or the municipalities which were to adopt inland wetlands regulations. The latitude of administering municipalities was further limited by the requirement that local regulations be adopted only in conformity with regulations of the

Commissioner of Environmental Protection. In fact, municipalities, as has been seen, by and large adopted regulations following models supplied by DEP.

The importance of this lies in the fact that in no sense does the inland wetlands law provide a prototype for a process which might prudently be followed in the development of a "management program" for the coastal zone under the federal statute. A fair reading of the federal law suggests that the process of evolving the management plan is of critical importance to its approval by the Secretary of Commerce and that this process requires a great deal of participation with the federal, state, regional and local governments and organizations and individuals who are part of the general public. (Indeed, this participation may provide its primary authentication.) There is no evidence in the legislative history of the inland wetlands law that suggests that such a process was followed, at least consciously, by any public or private organization, although, as has been seen, the Department of Agriculture and Natural Resources was instrumental in pushing toward regulations in this area, and the statute was ultimately strongly supported by the first Commissioner of Environmental Protection. Perhaps gratuitously, it might be observed that the absence of a "grass roots" genesis made the law less accepted and understood in Connecticut's municipalities than might otherwise have been the case and that this lack of understanding has contributed to difficulties in administering the law.

The inland wetlands law can, however, be looked at as a possible prototype for the execution of a coastal management program in that it seems to have many of the components which are required by the federal law. These federal requirements include the necessity that the state, either by itself or acting through regional or local governments, have "authority for the management"⁵⁸ of the coastal zone, including the power to:

"(1) administer land and water use regulations, control development in order to ensure compliance with the management program, and to resolve conflicts among competing uses; and

(2) to acquire fee simple and less than fee simple interests in lands, waters, and other property through condemnation or other means when necessary to achieve conformance with the management program."⁵⁹

Furthermore, for a management program to be approved, the Secretary must find to be in existence one or more of the following techniques to control land and water uses:

"(A) State establishment of criteria and standards for local implementation, subject to administrative review and enforcement of compliance;

(B) Direct state land and water use planning and regulations; or

(C) State administrative review for consistency with the management program of all development plans, projects, or land and water use regulations, including exceptions and variances thereto, proposed by any state or local authority or private developer, with power to approve or disapprove after public notice and an opportunity for hearings."⁶⁰

The Connecticut Inland Wetlands and Water Courses Act has many of these characteristics. With respect to its subject matter, it does provide a mechanism to administer land and water use regulations in which the municipalities are tightly controlled by state policies (which can be likened to the "management program"); it does authorize municipalities to acquire interests in land which constitute "wetlands" and "water courses" (and municipalities and state agencies

are elsewhere authorized to acquire interests in land for conservation and preservation purposes); it does provide for "state establishment of criteria and standards for local implementation"; it does provide for review at the state level of local ordinances and regulations.

However, it is less clear that the inland wetlands law provides specifically for the kind of state review of local enforcement which is contemplated by Section 306(e)(1)(A) of the Coastal Zone Management Act of 1972, as interpreted by regulations adopted by the National Oceanic and Atmospheric Administration, which, in pertinent part, will be quoted in their entirety:

"(1) Section 307(e)(1)(A) "State establishment of criteria and standards for local implementation, subject to administrative review and enforcement of compliance." This option requires the State to establish general criteria and standards within the framework of the coastal zone program for implementation by local government. Such criteria and standards would provide for application of criteria and standards to specific local conditions. Implementation by a local unit of government would consist of adoption of a suitable local zoning ordinance or regulation, and enforcement on a continuing basis. Administrative review at the State level requires provision for review of local ordinances and regulations and local enforcement activity for consistency with the criteria and standards as well as programs, not review of specific cases on the merits. In the event of deficiencies either in regulation or local enforcement, State enforcement of compliance would require either appropriate changes in local regulation or enforcement or direct State intervention."61

It is clear that under the Connecticut statute neither the Commissioner of Environmental Protection nor any other state agency has authority to conduct a "review of specific cases upon the merits." The Commissioner does have the power to conduct "general supervision of the administration and enforcement" of the statute and would obviously have the authority to inspect all records of local inland wetlands agencies for the purpose of a performance assessment. However, the statute contains no authority for the Commissioner to take action in the event that an inland wetlands agency is not properly performing its functions (other than to appeal an

action in a particular case). Thus, to return to the language of the federal regulation, in the event deficiencies are found in local enforcement, there is no way on the face of the inland wetlands statute for the Commissioner to require "appropriate changes" in regulations or "enforcement" or to intervene directly other than to appeal a specific permit action to the Court of Common Pleas as an "aggrieved" party. The inland wetlands law, as presently constituted, would not, it would appear, as a legal matter meet the requirements of the federal regulations.

Apart from these legal considerations, some practical observations are pertinent. The thrust of the Coastal Zone Management Act of 1972 appears to be the requirement that a state have a "management program" that in fact will function. The statute, to be sure, can be read narrowly as one demanding only ritualistic conformity with arbitrary criteria; however, obviously, it was not the intention of the Congress in enacting this law to require of the coastal states such an empty exercise. A program meeting all of the formal legal requirements may fail because of the sheer inability of the components to perform assigned functions. Establishment of a policy which no governmental agency has the will or resources to carry out is meaningless.

Creating a state policy for coastal zone management which is to be administered by local agencies lacking the expertise, experience or resources needed for that administration results in chaos, not "management." ~~If the state itself is unable or unwilling to provide the technical resources needed by municipalities to carry out their duties, the most well-intentioned "management" system can break down.~~ It is not meant to cast a shadow on the administration of the inland wetlands law in Connecticut, since it is not the purpose of this study to evaluate that program. A dedicated DEP staff has in fact done more than might be expected under the circumstances. ⁺⁺⁺ However, conscientiousness requires this report to flash

a warning signal based not so much on the technical characteristics of the law and the regulations but on the practical capabilities of the institutions and people involved. This warning is more meaningful if considered in the context of land use policies affecting the entire coastal zone, not just a narrow category of land identified as "wetlands" and "water courses." Not only the natural resources but the competing uses are infinitely more varied in Connecticut's "coastal zone" than they are in the land embraced by the Inland Wetlands and Water Courses Act. Administration of a coastal "management program" thus will be even more complex and demanding of all its components.

Footnotes

1. 1972 P.A. 155; §§ 22a-36 -- 22a-45, Conn. Gen. Stats., Rev. of 1958, as amended.
2. § 8-1 et. seq., Conn. Gen. Stats., Rev. of 1958, as amended.
3. Dooley v. Town Planning and Zoning Commission of Fairfield, 151 Conn. 304, 197 A.2d 770 (1964); Bartlett v. Zoning Commission of Old Lyme, 161 Conn. 24, 282 A.2d 907 (1971).
4. §§ 25-110 and 25-112, Conn. Gen. Stats., Rev. of 1958, as amended.
5. §§ 25-4a -- 25-4g, Conn. Gen. Stats., Rev. of 1958, as amended.
6. §§ 25-7b -- 25-7c, 25-10 -- 25-18, Conn. Gen. Stats., Rev. of 1958, as amended.
7. § 25-54i, Conn. Gen. Stats., Rev. of 1958, as amended.
8. Vartelas v. Water Resources Commission, 146 Conn. 650, 153 A.2d 822 (1959); Brecciaroli v. Commissioner of Environmental Protection, 36 Conn. L.J. 42, decided Apr. 15, 1975.
9. §§ 22a-28 -- 22a-35, Conn. Gen. Stats., Rev. of 1958, as amended.
10. 1971 P.A. 872; §§ 22a-1 et seq., Conn. Gen. Stats., Rev. of 1958, as amended.
11. Brecciaroli v. Commissioner of Environmental Protection, supra fn. 8.
12. 1971 SB 298.
13. *Id.* § 7.
14. Jour. of the Senate, June 4, 1971, p. 1957.
15. The vote was 86 to 75 against, with sixteen absent and not voting. Jour. of the House, June 9, 1971, p. 2387.
16. 1972 Com. Sub. Bill 5257.
17. Jour. of the House, Apr. 10, 1971, p. 411; voice vote.
18. Jour. of the Senate, Apr. 13, 1971; p. 535; voice vote.
19. § 22a-36, Conn. Gen. Stars., Rev. of 1958, as amended.
20. § 22a-42(c), Conn. Gen. Stats., Rev. of 1958, as amended.
21. § 22a-42(f)(2), Conn. Gen. Stats., Rev. of 1958, as amended.

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32. § 8-1, et seq., Conn. Gen. Stats., Rev. of 1958, as amended.
33. § 22a-38(15), Conn. Gen. Stats., Rev. of 1958, as amended.
34. § 22a-38(16), Conn. Gen. Stats., Rev. of 1958, as amended.
35. § 22a-42a(a), Conn. Gen. Stats., Rev. of 1958, as amended.
36. § 22a-40(a) and (b), Conn. Gen. Stats., Rev. of 1958, as amended.
37. § 22a-42(c), Conn. Gen. Stats., Rev. of 1958, as amended.
38. § 22a-42a(b), Conn. Gen. Stats., Rev. of 1958, as amended.
39. § 22a-42a(c), Conn. Gen. Stats., Rev. of 1958, as amended.
40. § 22a-41, Conn. Gen. Stats., Rev. of 1958, as amended.
41. § 22a-43, Conn. Gen. Stats., Rev. of 1958, as amended.
42. § 22a-43a(a), Conn. Gen. Stats., Rev. of 1958, as amended.
43. § 22a-39(g), Conn. Gen. Stats., Rev. of 1958, as amended.
44. § 22a-39(a), Conn. Gen. Stats., Rev. of 1958, as amended.
45. § 22a-39(f), Conn. Gen. Stats., Rev. of 1958, as amended.
46. § 22a-39(c), Conn. Gen. Stats., Rev. of 1958, as amended.
47. "Inland Wetlands and Water Courses Regulations of the Connecticut Department of Environmental Protection," 35 Conn. L.J. No. 39, p. 1-A, Mar. 26, 1974.
48. Information supplied by (Mrs.) Cynthia M. Ivey, Connecticut Department of Environmental Protection.
49. Id.
50. § 22a-39(g), Conn. Gen. Stats., Rev. of 1958, as amended.
51. § 22a-38(15), Conn. Gen. Stats., Rev. of 1958, as amended.
52. Statement of (Mrs.) Cynthia M. Ivey, Connecticut Department of Environmental Protection.
53. Id.
54. "Inland Wetlands and Water Courses Regulations of the Connecticut Department of Environmental Protection," 25 Conn. L.J. No. 39, p. 1-A, dated March 26, 1974.

Footnotes, cont'd

45. § 22a-38(13), Conn. Gen. Stats., Rev. of 1958, as amended.
46. Supra, fn.44, § 22a-39-4.2.
47. Supra, fn.44, § 22a-39-3.2.
48. Supra, fn.44, § 22a-39-4.3.a.
49. Supra, fn.44, § 22a-39-6.1.d.
50. Supra, fn.44, § 22a-39-5.2.
51. The regulations explicitly permit towns to designate a local wetlands agency subsequent to the cut-off date and adopt regulations. Upon approval of the regulations by the Commissioner, the local inland wetlands agency has jurisdiction over regulated activities. § 22a-39-11.7.
52. For the most part, information in this section was supplied by (Mrs.) Cynthia M. Ivey, Connecticut Department of Environmental Protection.
53. § 22a-39(c) and (d), Conn. Gen. Stats., Rev. of 1958, as amended.
54. § 22a-39(a), Conn. Gen. Stats., Rev. of 1958, as amended.
55. Regs., § 22a-39-11.8.
56. Pub.L. 92-583, 16 U.S.C.A., §§ 1451 -- 1464.
57. § 22a-40(b), Conn. Gen. Stats., Rev. of 1958, as amended.
58. See, for example, 16 U.S.C.A., § 1455(c)(1).
59. 16 U.S.C.A., §§ 1455(e)(1) and (2).
60. 16 U.S.C.A., §§ 1455(e)(1)(A), (B) and (C).
61. Fed. Reg., Vol. 40, No. 6, Jan. 9, 1975, Tit. 15, ch. IX, part 923, § 923.26(b)(1).

LOCAL REGULATION OF "INLAND WETLANDS" IN CONNECTICUT --

A PROTOTYPE "MANAGEMENT PROGRAM" UNDER THE

COASTAL ZONE MANAGEMENT ACT OF 1972?

PART II

Adoption of Regulations and Administration of Permit Process
by Connecticut Municipalities

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INTRODUCTION

Part I of this study discussed the adoption of the Inland Wetlands and Water Courses Act by the Connecticut General Assembly in 1972 and considered the relationship thereby created between the state Department of Environmental Protection and Connecticut municipalities, as well as exploring the relationship of this "management" system to the federal Coastal Zone Management Act. This Part II deals with the administration of the program by Connecticut municipalities, including the process of adoption of inland wetlands regulations and administration of the permit system. The methodology followed included interviews by the writer with a knowledgeable representative or representatives of the agencies administering the inland wetlands program in fifteen Connecticut municipalities. The interview was conducted personally in twelve instances and in the other three instances by telephone. It was preceded by a letter of introduction which appears as Appendix A. A questionnaire was prepared which was used as the basis of the interview but which was not shared with the interviewee prior to the interview. The questionnaire appears as Appendix B. Several cautions should be offered at the outset: The study does not represent, obviously, an examination of the administration of the program by all of the Connecticut towns which have adopted regulations. Nor is it based upon a scientifically selected sample of all such towns. The towns which

were selected were chosen on the basis of a more or less subjective judgment concerning which communities might be able to offer insightful information which would be useful to this study. Ranging in population from 3000 persons to 67,800 (estimated), in size from 15.9 square miles to 60.38 square miles, in location from Fairfield County commuter towns to small rural communities in northeastern Connecticut, the communities selected do appear to represent something of a cross section. Another caution relates to the time in which these interviews were conducted. They were all conducted in December of 1975 and roughly cover experiences encountered during the period beginning with the adoption of the Inland Wetlands and Water Courses Act by the Connecticut General Assembly and ending at the time of the interviews. During that span of time it is reasonable to suspect that the pressure on land for development purposes in most communities was not intensive and that this pressure was particularly light in 1975, during which year the towns had adopted regulations that were a part of the permit process. A final caution is that a survey such as this one is difficult to quantify in any convenient numerical terms, and although much of the data is objective, some of the material which appears herein necessarily must rest upon the subjective judgment of the person being interviewed and the subjective reaction of the writer. Therefore, one should be cautious in arriving at generalizations on the basis of this survey.

Administering Agencies

The Inland Wetlands and Water Courses Act authorizes municipalities, acting through their legislative bodies, to authorize "any board or commission, as may be by law authorized to act, or [may establish] a new board or commission" to promulgate inland wetlands regulations.¹ Thus, towns were authorized to designate as the administering agency conservation commissions, planning and zoning commissions, other boards or commissions authorized to act, or to create an entirely new agency.

In the fifteen towns interviewed, six chose to create new agencies, five chose to designate their conservation commissions, and four chose to designate their existing planning and zoning commissions. The table on the following page presents this and other pertinent information. It may be noteworthy that all of those towns selecting the planning and zoning commission to perform the inland wetlands administration have professional staff available.

The number of members on the administering board varies from five to nine, excluding alternates, and they are either appointed by the Board of Selectmen, appointed by the Town Council, or, in some cases, elected. It is interesting to note that in some communities membership on the agency is derived through certain primary associations. In the town of Woodbridge, for example, three members of the Inland Wetlands Agency are from the Conservation Commission and two are from the Planning and Zoning Commission. In New Canaan, the five-member agency is composed of one member from the Flood and Erosion Control Board, two from the Conservation Commission and two from the Planning and Zoning Commission. And in the city of Norwich, which also has an independent Inlands Wetlands Agency, the chairman of the Wetlands Agency is also chairman of the Planning and Zoning Commission. In that City one member of the five-man commission is from the Conservation Commission and the three remaining members are "at large."

The qualifications of the members of inland wetlands agencies in the towns under consideration, whether conservation commissions, planning and zoning commissions or newly created agencies, are varied. While some members bring particular useful expertise to their service, by and large the members represent a cross section of citizens interested in public service of this kind who are not experts on any subject matter relevant to the regulation of inland wetlands. The tendency has been, evidently, to elect or appoint to these bodies the same type of

Table 1

Town	County	Population	Area	Date of Adoption of Inland Wetland Regulations	Type of Agency	Professional Staff
Avon	Hartford	9,400	23.5 sq. mi.	June, 1974	Inland Wetlands Agency	Yes
Brooklyn	Windham	5,400	28.7 "	June, 1974	Conservation Commission	No
Canton	Hartford	7,100	25.0 "	June, 1974	Inland Wetlands Agency	No
Chester	Middlesex	3,000	15.9 "	April, 1974	Conservation Commission	No
Coventry	Tolland	8,300	37.3 "	June, 1974	Planning & Zoning	Yes
Easton	Fairfield	5,800	28.8 "	Dec., 1973	Conservation Commission	No
Enfield	Hartford	45,000	33.8 "	Sept., 1974	Planning & Zoning	Yes
Glastonbury	Hartford	23,000	52.5 "	July, 1974	Conservation Commission	Yes
New Canaan	Fairfield	19,300	23.3 "	June, 1974	Inland Wetlands Agency	Yes
Newtown	Fairfield	16,700	60.38 "	Aug., 1974	Conservation Commission	No
Norwich	New London	44,500	27.1 "	July, 1974	Inland Wetlands Agency.	Yes
Southbury	New Haven	10,000	40.9 "	June, 1974	Inland Wetlands Agency	No
West Hartford	Hartford	67,800	22.2 "	June, 1974	Planning & Zoning	Yes
Wilton	Fairfield	16,500	26.8 "	Dec., 1973	Planning & Zoning	Yes
Woodbridge	New Haven	8,300	19.3 "	April, 1974	Inland Wetlands Agency	No

citizen decision makers who might be appointed to any other municipal bodies, although in the case of towns whose conservation commissions are serving as inland wetlands agencies it may be supposed that membership is primarily conservation oriented. Despite this generalization, it should also be said that a number of members in the towns interviewed do have knowledge of particular usefulness to inland wetlands regulations. These include attorneys, engineers, landscapers, a resource economist, geologists, arborists, foresters, students of environmental science, a nationally known expert on wildlife management, teachers, and the like.

One of the greatest variables revealed by the survey is in the level of available regular staff support from municipal employees. This varies from no such support in smaller towns having no professional planning staff to substantial support from the planning staffs in the larger towns and cities. In the Town of Wilton, for example, the Inland Wetlands Agency, which is also the Planning and Zoning Commission, has available to it a full-time town planner as well as his assistant. The Assistant Planning Director of the City of Norwich spends a substantial amount of his time with the Inland Wetlands Agency, an independent body. In the Town of Enfield, where the Planning and Zoning Commission is the Inland Wetlands Agency, the Planning Director, the Public Works Director and the Building Inspector all play a role in a highly integrated system. The Town of Glastonbury employs an environmental planner, who spends twenty-five per cent of his time with the Conservation Commission on inland wetlands matters. However, in other towns, such as Chester, Canton, Brooklyn, Newtown and Easton, the Inland Wetlands Agency has no assigned professional staff whatsoever. These towns in some instances have hired consultants or part-time employees for particular tasks. For example, the Town of Easton employs a student of the Yale School of Forestry, who works for the Inland Wetlands Agency, which is the Conservation Commission, for one-half day a

week. Agencies lacking internal staff have turned to outside resources, such as the State Department of Environmental Protection and the Soil Conservation Service, whose contributions will be discussed in more detail in the material which follows. All of the agencies interviewed rely on Town Counsel for formal legal advice, although those agencies having lawyers as members assuredly turn to them for informal advice, particularly on procedural matters.

Adoption of Town Regulations

The Inland Wetlands and Water Courses Act authorizes municipalities, acting through their Inland Wetlands Agencies, to promulgate regulations "to protect the wetlands and water courses within [the] territorial limits" in conformity with regulations promulgated by the Commissioner of Environmental Protection.² The agencies are also authorized to establish by regulation the "manner in which the boundaries of inland wetland areas ... shall be established and amended or changed."³ Procedural requirements with respect to the adoption of regulations and the establishing of boundaries of inland wetland areas demand a public hearing "at which parties in interest and citizens shall have an opportunity to be heard."⁴ Beyond the requirement that specified public notice of the public hearing shall be given, the statute does not specify the procedural steps to be followed by Inland Wetlands Agencies in the adoption of regulations.

All of the interviewed towns have adopted inland wetlands regulations. The first in the sample were Wilton and Easton, which acted in December of 1973, and the latest in the sample, Glastonbury and Norwich, acted in July of 1974. With one exception, all of the towns designated inland wetlands boundaries at the same time that they adopted regulations. Some towns adhered in the text of their regulations very closely to the model suggested by the Department of Environmental Protection (Part I Appendix B), or the model suggested by the Connecticut Inland

Wetlands Project. Other towns made significant modifications to meet what were seen as special local needs, and some municipalities went to extensive and creative lengths to establish regulations totally adapted to local needs. An example of the latter is the regulations adopted by the Town of Glastonbury which appear as Appendix C.

For the most part this process did not involve significant citizen input and typically included only the single public hearing required by statute. In most municipalities the regulations thus represented work of the Inland Wetlands Agency itself performed to meet the technical requirements of the statute without formal consultation or involvement with citizen groups or other town agencies. In many towns the process was begun by a visit to the agency by a representative of the state Department of Environmental Protection who described the reason for the statute, the process prescribed by law for the adoption of regulations and the licensing activities by the agency which would follow it, suggested ways in which the agency could proceed, left certain written materials with the agency for use in the drafting of regulations and indicated the role of DEP in providing further assistance and ultimately acting upon the regulations themselves. In many towns, a representative of DEP also returned at the time of the public hearing on the formal adoption of the regulations in order to provide answers to questions arising at the hearing, both substantive and procedural. Towns requiring this type of assistance typically were those without professional planning staffs, and several interviewees stated that the town could not have moved ahead without such help. Another source of outside support during the period when regulations were adopted and boundaries were delineated was the U. S. Soil Conservation Service, which was, of course, the source of the basic soils information upon which the DEP "inventory" rested. In certain towns SCS proved very helpful, and the towns which received help at this

stage from that source tended to continue to look to that resource for future assistance when problems arose.

While in many of the municipalities the preparation of inland wetlands regulations and their adoption appears to have been an isolated act of the agency itself, with minimum involvement from citizens and other public bodies, in some towns this was not the case. For example, the City of Norwich formed a special citizen task force composed of representatives of the general citizenry, the Planning Commission, the Conservation Commission and attorneys. Starting with the model provided by the state, this body eventually made recommendations which were adopted (originally by the Conservation Commission, which was designated as the Inland Wetlands Agency in that city at the outset and which later has been supplanted by a specially formed Inland Wetlands Agency). Action in the Town of Woodbridge was also preceded by consideration of the matter by a citizen task force. After the Inland Wetlands Agency had been formed, frequent meetings were held, some of them jointly with the Planning and Zoning Commission. While no public hearings were held as such, other than the one required by statute, it was common for a number of observers to attend the meetings of the Inland Wetlands Agency so that there was a greater degree of public involvement than was the case in many other towns. An infusion of "public" input was also naturally part of the process when the regulations were adopted by an Inland Wetlands Agency which was also a Planning and Zoning Commission. For example, in the Town of Coventry, the regulation of inland wetlands is closely integrated with the entire land use regulation process, and adoption of inland wetlands regulations was seen as an extension of other land use regulations. This is true also in the City of West Hartford, where initial regulations were prepared by the Conservation Commission and then submitted for comment to Corporation Counsel. The product was then submitted to the Planning

and Zoning Commission, which further revised it. The Town of Enfield, which also has a highly integrated system, also adopted its inland wetlands regulations as a compatible extension of existing comprehensive land use regulations.

However they went about their tasks, it is apparent that the interviewed agencies performed them well. Despite the complexity of the statute, the novelty of the relationship created between the state and towns and fears expressed in the General Assembly by those who saw the Inland Wetlands Act as a beginning of "state zoning," when it came down to adopting regulations there was very little specific opposition in the towns themselves. A number of reasons come to mind, which necessarily must be speculative, including: Apathy based upon lack of information; the feeling that whatever was being done was the result of a state mandate about which towns could do little; basic support for inland wetlands regulation as a means of limiting growth; growing support for the idea of land use regulation centered upon natural resources which rested, in turn, on a general environmental awareness and concern; and the fact that inland wetlands regulations are general in nature and do not elicit a specific response based upon a particular proposal involving particular property. All of these reasons are in the background, but it is at least arguable that in many instances one reason for the smooth sailing was that the agencies themselves had done a good job, that the statute is in fact well conceived, that towns are better able to handle these new responsibilities than their own legislators imagined and that personnel in the Department of Environmental Protection and the Soil Conservation Service did an outstanding job in educating citizen decision makers in a very short time. In any event, there were few difficulties when it came down to the public hearing. Questions were raised at some of the hearings by developers and property owners, many of them centering on the adequacy, or lack of it, of the wetland maps. Some concern was expressed about the possibility

that the state might simply close down development. However, many towns reported poor attendance at the public hearing, and the majority of them indicated that there simply was no opposition at the time the regulations were adopted.

In summary it might be said that the towns moved rather smoothly through the adoption of regulations. There was relatively little citizen contribution to the process. Towns which did not have available professional staff received necessary assistance from the Department of Environmental Protection and the Soil Conservation Service. Opposition at the local level was not notably present. The adoption of regulations prepared the towns for entering on the next stage, regulating activities within the inland wetlands.

Functioning of Permit Process

As was discussed extensively in Part I of this study, following the adoption of municipal regulations, no "regulated activity" may take place within an inland wetland without permit issued by the Inland Wetlands Agency.⁵ However, not all activities in the inland wetlands area are regulated. Certain uses are permitted "as a right," evidently without regard to their impact upon the inland wetlands. These are:

(1) Grazing, farming, nurseries, gardening and harvesting of crops and farm ponds of three acres or less;

(2) A residential home (i) for which a building permit has been issued or (ii) on a subdivision lot, provided the permit has been issued or the subdivision has been approved as of the effective date of promulgation of the municipal regulations pursuant to subsection (b) of section 22a-42a;

(3) Boat anchorage or mooring;

(4) Uses incidental for the enjoyment and maintenance of residential property, such property defined as the largest minimum residential lot site permitted anywhere in the municipality, provided in any town, where there are no zoning regulations establishing minimum residential lot sites, the largest minimum lot site shall be two acres; and

(5) Construction and operation, by water companies as defined in section 16-1 or by municipal water supply systems as provided for in chapter 102, of dams, reservoirs and other facilities necessary to the impounding, storage and withdrawal of water in connection with public water supplies except as provided in sections 25-110 and 25-112.⁶

Furthermore, certain uses are permitted as "non-regulated" uses "provided they do not disturb the natural and indigenous character of the land." These are:

(1) Conservation of soil, vegetation, water, fish, shellfish and wildlife and

(2) Outdoor recreation including play and sporting areas, golf courses, field trails, nature study, hiking, horseback riding, swimming, skin diving, camping, boating, water skiing, trapping, hunting, fishing and shell fishing where otherwise legally permitted and regulated.⁷

A logical implementation of this statute, then, would involve a process whereby (a) the Inland Wetlands Agency would receive notification, in the regular course, of proposed operations, activities and uses in the inland wetlands area; and (b) the agency would make an initial administrative determination that the proposed operation, activity or use constitutes a use permitted as of right, a "non-regulated" use or a regulated activity. In the case of a "non-regulated" use, an evaluation of the environmental effect of the proposal would be needed.

If a regulated activity is involved, it is necessary to invoke the statutory process for the issuance of a permit. An application must be filed with whatever information is required by the Inland Wetlands Agency. The agency "may" hold a hearing, with appropriate public notice not sooner than thirty days nor later than sixty days after receipt of the application. Final action must be taken within forty-five days after the public hearing, if one is held, or within sixty days of the receipt of the application if no public hearing is held.⁸ In acting on the application the agency "shall" consider all "relevant facts and circumstances, including":

- (a) The environmental impact of the proposed action;
- (b) The alternatives to the proposed action;
- (c) The relationship between short-term uses of the environment and the maintenance and enhancement of long-term productivity;
- (d) Irreversible and irretrievable commitments of resources which would be involved in the proposed activity;
- (e) The character and degree of injury to, or interference with, safety, health or the reasonable use of property which is caused or threatened; and
- (f) The suitability or unsuitability of such activity to the area for which it is proposed.⁹

The agency is specifically authorized to "impose conditions or limitations" applicable to any permit which is issued, and it is also authorized to suspend or revoke a permit if the permittee does not comply with those conditions or limitations or if the activity, operation or use exceeds the scope of the authorization granted by the agency.¹⁰ The agency's role, as seen by the legislation, thus is not one of simply granting or denying a permit in accordance with an application as presented. By attaching conditions or limitations to the permit, the agency effectively can modify the proposal. Furthermore, its authority extends beyond its action in granting the permit in that it has authority to insure that work which is done in fact is in compliance with the permit.

The "model" regulations promulgated by the Department of Environmental Protection, which appear as Appendix B of Part I of this study, establish a procedure for "declaratory," "summary," and "plenary" rulings by Inland Wetlands Agencies. The initial step in the process is filing an application with the clerk of the Inland Wetlands Agency which contains only a modest amount of information, including the geographical location of the property and the description of the proposed activity or use.¹¹ On the basis of this application alone, the agency

may make a "declaratory" ruling that the proposed activity or use does not involve a regulated activity, and that is the end of the matter.¹² Also on the basis of the application, the agency may find that a proposed activity or use does not involve a significant impact or major effect on the inland wetland and thus should be allowed as a "non-regulated" activity; this decision is reflected in what DEP terms a "summary" ruling.¹³ However, if neither of these rulings is made on the basis of the initial application, the agency, under the scheme suggested in the model regulations, will make a "plenary" ruling finding that the proposed activity or use constitutes a "regulated" activity under the statute and setting in motion the formal permit-granting process.¹⁴ This process, as suggested by the model regulations, should include a request by the agency for information which is much more elaborate than that required in the initial application, including data with respect to soils, site plan, a biological evaluation, hydrological data and the like. The receipt of this information sets in motion the statutory process which is described above.

As has been noted, many towns did not slavishly adopt the model regulations or procedures recommended by the Department of Environmental Protection but considered other alternatives based upon their reading of the statute. The Inland Wetland and Water Course regulations of the Town of Glastonbury, which appears as Appendix C of this study, for example, envisions two types of permits, a "Class A" permit and a "Class B" permit. The Class A permit is issued for activities found, on the basis of a review of the initial application, to be regulated uses "not having a significant impact or major effect" on the wetland.¹⁵ However, if the Commission finds that the activity is a regulated activity which "will or may" have a significant impact or major effect, then the applicant is required to furnish a great deal of further information, including an elaborate site plan containing,

among other things, elevations at two-foot contour intervals, identification of soils, delineation of vegetative cover and location of aquifers. In addition the applicant is required to file a "supplemental report," including an analysis of existing water quality and anticipated effects, detailed information on soil stability, geologic information, an evaluation of plant species and wildlife in the area and the effect of the proposed use on those resources, detailed engineering and other architectural information and the like. The regulations of the City of Norwich also depart from the DEP model, but they also establish a two-step process whereby a relatively simple application is presented at the outset. The application presently in use by the City of Norwich is attached as Appendix D for general information purposes.

The review and background just concluded provide a setting for considering how this system is actually working. It is obvious that the regulatory scheme is a relatively elaborate one in regard to the procedure to be followed, the information which is required and the type of analysis that is needed. Furthermore, it should be noted that the restraints on land use represented by this system are in addition to all other restraints on land use, such as those required by local zoning regulations. Moreover, we have noted that most of the interviewed towns do not have full time planning staffs, and the members of the decision making agencies are, by and large, neither more, nor less, expert than the citizens who might normally serve on any other boards and commissions. How has this system been working?

The answer is that in most of the interviewed towns the system seems to be working better than one might have predicted. At least in these towns, the legislative intuition that municipalities are in fact ready to implement a sophisticated regulatory scheme centered on inland wetlands seems to be proving out. Having said that, it must immediately be stated that it is difficult to justify

that generalization (or any other in regard to inland wetlands administration) on any reliable statistical basis. As will be noted from an examination of Appendix B of this Part II, it was hoped that the interviews would quantify in a fairly clear-cut way actions on applications under categories such as those which had been granted, those which had been granted with conditions, those which had been denied, etc. Because of the flexible and, one submits, creative way in which the agencies are managing their responsibilities, any such clear-cut division is meaningless.

For example, in many instances, applications have been submitted and, after an informal discussion, withdrawn. Some applicants have been asked to provide further information and simply have not done so. In many cases, on the basis of informal discussions with the agency, work has been modified so that it does not intrude upon the wetland, and thus no application is submitted, although the work as originally designed would have required one. Also, there are many instances of amendments or modifications of applications during the process so that permits which might have been granted with a condition or a limitation attached have been issued without such provisions because of the prior modification of the proposal. Any effort to reduce the data to numbers also becomes difficult when the inland wetlands evaluation is part of a larger "impact" analysis of a proposal in a town having sophisticated land use regulations wherein the Planning and Zoning Commission is also the Inland Wetlands Agency. In the light of these ambiguities, the most useful development of the information supplied by the interviews would appear to be a discussion of what has happened in a number of the towns, by way of example.

As might be expected, activity has been least in small towns which at the time of the interviews had not been under extreme development pressure. The three smallest towns in the sample, Easton, Brooklyn and Chester, none of which

has a population exceeding 6000, had between them received twenty-four applications in all, and Easton, a Fairfield County town, had received sixteen of them. All of the applications received were granted, except for those still pending, in each of the three towns, often on the basis of a summary disposition by the agency and without public hearing. However, a number of the applications had been modified, and conditions were attached to permits, particularly with reference to anticipated erosion problems. For the most part, these applications have involved individual residential construction, typical problems being a driveway crossing a wetland or a septic system designed in or near a wetland area. None of these three towns has a professional planning staff. Easton has relied extensively on outside experts for the analysis of specific projects. Extensive assistance has been rendered in Easton by David Emerson, of the Department of Environmental Protection, and David Thomson, of the U. S. Soil Conservation Service. Brooklyn also has relied on representatives of the Soil Conservation Service, which is contacted in the case of every application and which has frequently suggested design changes and conditions to be attached to the permit; SCS also has conducted some on-site analyses. In connection with a proposal involving a bridge, the Department of Environmental Protection supplied a geologist for an application in Chester. In each of these small towns a Conservation Commission is the Inland Wetlands Agency. The feed into the system in each case is through the building inspector.

Glastonbury is an example of a larger community which has designated its Conservation Commission as the Inland Wetlands Agency. This relatively affluent Hartford Suburb, which operates under a City Manager-Council form of government, has a full-time planner who is assisted by an "environmental planner," also full time. The environmental planner assists the Conservation Commission in its role as the Inland Wetlands Agency and in other respects. The feed into the system is

through the Office of Community Development, which refers to the Inland Wetlands Agency all proposals involving wetlands. Glastonbury considers it important to conduct a great deal of dialogue with project proposers long before final plans take shape; in addition to the review which is part of the inland wetlands program, the Conservation Commission is involved in a larger environmental impact review which is considered a model of its kind among Connecticut municipalities. The review of wetlands thus becomes enmeshed in a larger perspective. At the time the interview was conducted, thirty applications had been received. These involved residential subdivisions, commercial developments, some single family residences and town roads. Again, all of the applications, except for two which are pending, have been granted, but this statement is deceptive. First, many applications were modified to the satisfaction of the Inland Wetlands Agency before they ever were presented to it, a feature considered important to the Glastonbury system. Second, many applications were granted subject to conditions or limitations related to the relocation of certain proposed facilities, cluster development, sedimentation and erosion control, preservation of wildlife habitat, site restoration after construction disturbance, flood control and the like. Despite the rather high level of staffing within the community, Glastonbury has also turned for assistance to resources outside the town. These have included requests for technical assistance to the Department of Environmental Protection and also assistance from the U. S. Soil Conservation Service.

New Canaan is a town comparable in size to Glastonbury which is under the development pressures common to Fairfield County. An Inland Wetlands Agency composed of two representatives of the Conservation Commission, two from the Planning and Zoning Commission and one from the Flood and Erosion Control Board is presided over by a Chairman who also heads the Conservation Commission and who is an attorney. The feed into the Inland Wetlands Agency is through the Town Planner, who screens

every application for development. Ten applications have been received, including proposals to "clean out" ponds, to enlarge ponds, to alter stream channels and to fill for residential development. All but one of these has been granted, the one being denied being a proposal for a residential subdivision. The staff of the Department of Environmental Protection has been helpful in regard to one proposal for dam construction, and the U. S. Soil Conservation Service has been an important source of information concerning precise delineation of wetland boundaries in particular cases.

Wilton, another Fairfield County town, chose to designate its Planning and Zoning Commission as its Inland Wetlands Agency. The inland wetland review thus becomes an integral part of the analysis of all projects by a commission administering all local land use regulations. The town employs a town planner and an assistant, both of whom are full time. As in the case of Glastonbury, it is quite common for proposers of projects to consult extensively the town planning office prior to making an application for a specific project. This has resulted in the modification of projects so that development has not occurred in wetlands. There have been only two specific inland wetland violations, both of which involved driveways crossing wetland areas. Both applications were granted, but a design requirement for culverts was imposed in order to minimize anticipated erosion. In connection with the permit process, no specific help has been sought from any outside source, such as the Department of Environmental Protection.

West Hartford, a suburban Hartford community with a population estimated at 67,000, provides another example of a municipality which chose to designate its Planning and Zoning Commission as its Inland Wetlands Agency and thus "fold in" inland wetlands considerations as part of a total process. As might be expected, West Hartford employs a director of Planning, who also has a staff. Again, it is

very common for project proposers to conduct extensive discussions with the staff prior to the submission of any specific proposals. Approximately six applications have been filed, two of them by the town itself for municipal purposes. All of them were granted but not before the Inland Wetlands Agency had imposed conditions relating to grading, retaining walls, flood control and the like. In West Hartford, site plan approval is required for all development projects other than single or two-family homes. The feed into the inland wetland regulatory process is through the building inspector, who examines all such proposals.

The towns of Coventry and Enfield have also elected to make inland wetlands review part of the total regulatory system administered by the Planning and Zoning Commission. In Coventry the feed into the system is through the building inspector, who makes an initial determination that an inland wetland problem may be involved. He then refers the project to the person who is the "agent" for both the Planning and Zoning Commission and the wetlands agency. If sanitary facilities are involved, the project is immediately referred to the sanitarian so that any design problems in that respect can be worked out prior to the project's reaching the wetlands agency itself. Only after the sanitarian has issued his approval does the matter reach the wetlands agency. In addition to the "agent" the town employs a full-time planner. A large number of design changes have been made after initial contact with this system and prior to any hearing. Other changes have been made after preliminary hearings before the wetlands agency, which are encouraged. The agency strongly prefers to see a design change before the permit is granted rather than attaching a condition to the permit without seeing the design. Fifteen applications have been received, involving single family residential, small commercial, and recreational uses, as well as subdivisions. All have been granted after appropriate design changes have been made. The agency makes a regular practice of

inspecting the work which is actually done after a permit has been granted. The Coventry agency received a great deal of help from the Department of Environmental Protection in the early stages and now needs assistance only occasionally. However, it does rely heavily on the U. S. Soil Conservation Service for soil analysis of specific sites and suggestions concerning appropriate design changes.

The Enfield Planning and Zoning Commission, as the town's Inland Wetlands Agency, also has the assistance of a full-time Planning Director. Feeds into the inland wetlands system are through the Director. It is very common for project proposers to hold extensive discussions with town staff and incorporate suggested design changes so that money may not be wasted on a project which is not likely to be approved. Twelve applications have been received, one-third of them for municipal uses, and the remainder including commercial, light industry and heavy industry uses. Many of these applications have been modified voluntarily prior to issuance of the permit, and all have been granted. In administering the inland wetlands program, the benefit of this type of review to developers is stressed since oftentimes, it is pointed out, building in wetland areas is simply inadvisable from the economic point of view. In connection with the permit process, the town has required no assistance from the Department of Environmental Protection but has used the Soil Conservation Service in connection with one proposal.

In contrast to some towns of comparable size, the Southbury Inland Wetlands Agency has experienced a great deal of permit activity. The agency has received at least sixty-five applications and presents a picture of why it is hard to statistically analyze programs such as these. The sixty-five applications have included residential, commercial, light industry and school projects, among others. In a number of instances, the applicant has been asked for further information and has simply not returned with what is needed, while, on the other hand, not withdraw-

ing the application. Approximately seventy-five percent of the applications have been granted, typically with conditions relating to the maintenance of water flow under driveways and minimizing soil erosion. Twelve applications were pending as of December, 1975. One application was denied, and this denial was reversed by the Court of Common Pleas. The agency, which does not have the benefit of a town planning staff, has used an outside consultant on one occasion and has also extensively turned to the Department of Environmental Protection and, to a lesser degree, to the Soil Conservation Service.

The City of Norwich, which has an independent Inland Wetlands Agency, allocates more than thirty percent of the time of the assistant planning director to inland wetlands work. The feed into the system is through the building inspector or the Planning Commission, in the case of subdivision approvals. Fifteen applications have been received involving single family residential, small commercial and subdivision activities. Eighty-five percent of these were granted on the basis of the preliminary application -- that is, on a determination that the impact on the wetland was not "significant." No applications have been denied. However, it is very common for the assistant planning director to discuss proposals with property owners prior to the submission of a formal application so that many changes are made prior to the matter reaching the Inland Wetlands Agency. Major problems have involved a correction of drainage difficulties. In connection with the permit process the city has consulted by telephone with the Department of Environmental Protection and has frequently called on the services of the Soil Conservation Service.

The towns of Avon and Canton are comparably sized satellite municipalities to the City of Hartford. Both have independent Inland Wetlands Agencies. Informal discussion with a representative of the agency is common in both towns prior to the submission of a formal application. Avon has received twenty-two

applications, the majority involving filling of some kind. Applications have included driveways, residential subdivisions, sewers, a golf course and an office building. All applications have been granted, but conditions have been imposed to control wetlands, stipulate the type of fill and the like. Canton also has received twenty-two applications, mostly for subdivision approvals. Two-thirds of these have been granted, often with limiting conditions, and one-third of them have been denied. Avon has used staff of the Department of Environmental Protection for specific project analysis and has also utilized the Soil Conservation Service. Canton has required assistance from neither agency in connection with the permit process.

The Town of Newtown has received twenty-five applications for inland wetlands permits and has granted approximately eighty percent of them. These have included a school, residential subdivisions, two shopping centers, and commercial development. Commonly restrictions have been attached to the permits which have been granted with regard to sediment and erosion control and in some cases facilities have been moved from wetlands entirely and redesigned. A number of applications have been turned down at the preliminary stage with the indication that further consideration would be given when more information is supplied. The town has not required assistance from the Department of Environmental Protection in the permit process but has used the services of the Soil Conservation Service extensively.

In the Town of Woodbridge eight applications have been received, mostly in connection with single family homes. Most have been granted, although in some cases the agency has found "major impact" and requested further information, whereupon the applicants have withdrawn.

While the foregoing describes in general terms what in fact is occurring in the several towns interviewed, the effect of these operations is much more difficult to assess. The stated purpose of the Inland Wetlands and Water Courses Act is:

"... to protect the citizens of the state by making provisions for the protection, preservation, maintenance and use of the inland wetlands and water courses by minimizing their disturbance and pollution; maintaining and improving water quality in accordance with the highest standards set by federal, state or local authority; preventing damage from erosion, turbidity or siltation; preventing loss of fish and other beneficial organisms, wildlife and vegetation and the destruction of the natural habitats thereof; deterring and inhibiting the danger of flood and pollution; protecting the quality of wetlands and water courses for their conservation, economic, aesthetic, recreational and other public and private uses and values; and protecting the state's potable fresh water supplies from the dangers of drought, overdraft, pollution, misuse and mismanagement by providing an orderly process to balance the need for the economic growth of the state and the use of its land with the need to protect its environment and ecology in order to forever guarantee to the people of the state, the safety of such natural resources for their benefit and enjoyment and for the benefit and enjoyment of generations yet unborn." ¹⁶

It is to be noted that most of the applications which have been presented to Inland Wetlands Agencies in the interviewed towns have been granted, in one form or another. A great many proposals evidently have been modified to conform to inland wetlands standards prior to their formal submission as a result of informal conferences with municipal officials. Furthermore, applications have been commonly conditioned upon provision for safeguards against erosion, flood control and the like. However, the Commissioner of Environmental Protection in fact does not conduct an ongoing audit of the performance of the towns and thus there is in existence no statistical summary, or other report, which would indicate how in fact the towns are performing. And, as has been pointed out, neither the Commissioner of Environmental Protection nor any other state agency within the Executive Branch is a body to which persons aggrieved by Inland Wetlands Agency decisions can appeal; the only appeal lies to the Court of Common Pleas,¹⁷ and, as has been pointed out, the interview sample revealed only one such appeal.

Furthermore, the detection of violations appears to occur in a somewhat random fashion. In some instances, members of the Inland Wetlands Agency, the inland wetlands "agent" or the building inspector have personally observed viola-

tions, which have then been brought to the attention of the agency in a formal way. It is very common for ordinary citizens who observe what they regard as violations of the regulations to notify the authorities themselves. A typical agency action in some towns would be for the chairman, or a member of the staff, simply to call the property owner involved, find out what is going on and instruct him to file an application if it is warranted. It is also common for the agency to write letters to the landowners believed to be in violation informing them of the provisions of the inland wetlands regulations and the apparent need for a permit. In a number of instances this has resulted in the required application and has brought the project within the cognizance of the Inland Wetlands Agency. Some agencies, notably the one in Coventry, have found it necessary to go to further lengths to insure enforcement, including the issuance of cease and desist orders, and at least one arrest by the inland wetlands "agent," who has been deputized as a special constable.

Administrative Cost of Permit System

On the basis of the interviews, it was very difficult to quantify the administrative cost of the permit and enforcement system as presently in place in the towns. It was particularly difficult to do this in the case of agencies relying on staff which also had other duties. In the case of wetlands agencies also serving as Planning and Zoning Commissions, arriving at the amount of time which the Commission members spend on "inland wetland" matters presents obvious difficulties. Furthermore, there are fluctuations in the rate of agency activities from time to time. It is very clear, however, that any assessment of administrative costs must take into account not only the cost of salaried staff time but also the value of the time contributed by the many volunteer decision makers taking part. Furthermore, the services contributed by outside governmental agencies, such as the Department of Environmental Protection and the U. S. Soil Conservation Service,

must be taken into account.

Some indication of the amount of time which is being spent on inland wetlands matters in these municipalities is suggested by Table 2 on the following page.

Budgeting for these activities varies a great deal from town to town. The "inland wetland" component of a budget for an Inland Wetlands Agency that is also a Planning and Zoning Agency disappears within the general budget for the Planning and Zoning Commission and is not separately segregated. Conservation Commissions which also serve as Inland Wetlands Agencies also have a combined budget which does not sever out the inland wetlands component. For those agencies which are separate, the following recent annual budget figures were available:

Woodbridge	-	\$300 - \$500
Avon	-	\$ 9,090
Canton	-	\$ 1,150
Southbury	-	\$15,900
New Canaan	-	\$ 1,000
Norwich	-	\$ 2,000

The most recent budgets for Conservation Commissions which are serving as Inland Wetlands Agencies are as follows:

Brooklyn	-	\$ 500
Chester	-	\$ 275
Easton	-	\$ 2,000
Glastonbury	-	\$ 2,500 - \$3,000
Newtown	-	\$ 2,000

No effort has been made in this study to quantify the contribution made to the performance of municipal responsibilities by the Department of Environmental

Table 2

Town	Type of Agency	Number of Members	Average hours per month contributed by members	Paid Staff
Avon	Inland Wetlands Agency	9	Chairman - 10 hours Members 3 - 4 hours	Town Planning Administrator
Brooklyn	Conservation Commission	7	Chairman & Sec'y - 10 Members - 2	None
Canton	Inland Wetlands Agency	5	3	Town Engineer - 6 hours per month
Chester	Conservation Commission	7	1	None
Coventry	Planning & Zoning Commission	5	Chairman - 60 - 80 Members - 10	Town Planner & Zoning & Wetlands Agent
Easton	Conservation Commission	7	10	Part-time Forestry Student
Enfield	Planning & Zoning Commission	7	Cannot quantify	Planning Director & Secretary (5%)
Glastonbury	Conservation Commission	7	3	Environmental Planner (25-30%) Secretary (50%)
New Canaan	Inland Wetlands Agency	5	Not quantified	Town Planner
Newtown	Conservation Commission	7	10 - (90% on wetlands)	Recording Secretary
Norwich	Inland Wetlands Agency	5	Chairman - 10 Members - 5	Assistant Planning Director (30-35%) - Part-time Secretary
Southbury	Inland Wetlands Agency	6	10 - 12	Part-time Clerk
West Hartford	Planning & Zoning Commission	5	Not quantified	Director of Planning & Staff
Wilton	Planning & Zoning Commission	9	2	Town Planner & Assistant
Woodbridge	Inland Wetlands Agency	5	2 - 3	Building Inspector (10%)

Protection and the U. S. Soil Conservation Service. A description of DEP's organization to meet town needs appears in Part I of the study. It is clear that this contribution as well as that of the Soil Conservation Service has been very significant in the administration of this program. If it is essential to the program, as it appears to be, the cost of this extra-municipal contribution must be included in a quantification of the total cost of the decision making system.

Attitude toward Program

The attitude toward the Inland Wetlands Program in the towns which were interviewed appeared to be essentially positive. As has been noted, the process of adopting regulations went much more smoothly in many towns than had been anticipated by members of the agencies. Support has been very general, including not only members of land conservation and "environmental" constituencies, but also those individuals who see the inland wetlands program as yet another method of limiting development. Land developers, builders and realtors have understandably formed the most significant block in opposition. In some towns the inland wetlands program has been seen as an adjunct to sensible planning, with benefits to the developer as well as the town, since the economic cost of building in some inland wetland areas may not make much sense from the builder's point of view. In some municipalities, general support was seen to be the product of a deliberate effort on the part of the Inland Wetlands Agency not to create the image of a regulatory authority trying to "push people around." Other towns indicated a general indifference, which may be more a reflection of the lack of development pressure than anything else. Support in one town was ascribed to the fact that citizens have seen too much unfortunate development elsewhere and wished to keep it out of their own town. The new look at resource management which the inland wetlands law induces was seen as leading toward the adoption of cluster zoning.

As has been noted ~~in the discussion of the~~ specific town programs, a great many of them have felt the need of technical assistance from resources not available from regular municipal employees. This assistance has been provided by the Department of Environmental Protection, the U. S. Soil Conservation Service, and, in a few instances, by outside consultants. Selection seems to have been based primarily on what was conveniently available at the time of need more than on any other factor. Some towns, because of their geographical location or because of personal relationships involving members of Inland Wetlands Agencies or their staffs, have been most comfortable turning to the Soil Conservation Service, which has provided in many instances analyses of specific projects, soil types and like concerns and has often suggested design criteria for projects relating primarily to the control of erosion and sedimentation. Other towns have relied upon the staff of the Department of Environmental Protection. There was heavy reliance, as has been noted, on that staff during the period when regulations were being adopted, and some towns have also turned to the Department for the analysis of specific proposals in the course of administering the permit process. While communities with full-time planning staffs have understandably had to rely to a lesser extent on "outside" expertise, even some of these towns (for example, Glastonbury, Norwich and New Canaan) have turned to both the Soil Conservation Service and to the Department of Environmental Protection for assistance with specific problems. Consulting services have ranged from part-time help in the Town of Easton to an extensive environmental impact analysis performed by a consultant for the Southbury wetlands agency.

The type of assistance required in the surveyed towns has largely been technical in nature. Once towns have adopted regulations, they seem not to have required much assistance from sources outside the municipality in regard to the

legal interpretation of the statute or the regulations or advice in the general category of public administration. For legal advice the towns are relying on town counsel, and none of the agencies indicated any dissatisfaction with this arrangement. Organization leading to the effective administration of the law seems to have been provided during the orientation period when regulations were being adopted. Technical assistance required in the course of the permit process seems to have consisted generally of three types: First, technical analysis of the conditions actually existing at a particular site (soils, hydrology, etc.); second, analysis of the effect of a proposed use upon those conditions; and, third, criteria to be followed to eliminate or ameliorate adverse impacts which have been noted. As has been noted, the towns have not seemed to care particularly where the help has come from, but several of them insisted that they could not operate without some such assistance (for example, Newtown, Easton and New Canaan). On the other hand, all of the municipalities indicated an ability to deal with a great many routine problems relying solely on their own resources. This suggests the need for an available resource to be used on an "as needed" basis to provide technical information and analysis but does not answer the question of whether that need may best be satisfied by a system organized by the Department of Environmental Protection, the Soil Conservation Service, regional planning agencies or perhaps some entirely different entity.

Conclusion

The foregoing suggests that Connecticut towns, if provided with adequate technical support when needed, may be capable of managing the land use decision making system represented by the Inland Wetlands and Water Courses Act more comfortably than is implied by the abstract analysis set forth in Part I. Since this survey hardly is based on a scientific sample or data, general conclusions must be made with caution. The towns surveyed have, obviously, managed to comply with the

terms of the state inland wetlands law and have adopted regulations and have proceeded to administer them with the help of a varying amount of outside assistance. However, a study such as this cannot draw any conclusions about the effectiveness of town administration; the absence of on-going supervision and oversight of municipal inland wetlands agencies by regional or state agencies interested in insuring compliance with the state policy means that towns may simply be going through the motions without really effectively administering the state policy. Thus, no judgment is made on this point.

It is suggested that there would be value in conducting an in depth survey in the Connecticut towns which actually might be expected to be impacted by policies adopted under the Coastal Zone Management Act. This survey could perhaps be conducted by the regional planning agencies within which the various towns are located and would assess the institutional ability of those municipalities to administer "coastal" policies adopted on a pattern similar to that of the Inland Wetlands and Water Courses Act. Such a survey should particularly note the types of technical assistance which the municipalities would be in need of so that recommendations could be made to provide for the needed help. This study suggests that the technical help may not be required on an ongoing basis once the system is in place. There will be, however, an ongoing need for analysis and assistance in particular cases. The reports from the various regional planning agencies can be collated to provide a basis for moving ahead.

Does local regulation of inland wetlands in Connecticut provide a prototype "management" program under the Coastal Zone Management Act of 1972? My conclusion is that in a general sense, it does. Clearly identified state policies can be administered by municipalities if they understand them and are provided with the resources for that administration. However, it must be recognized that management

of the coastal zone is even more complex than management of inland wetlands and water courses. Furthermore, if local decision makers are to be relied upon primarily for particular permit actions they must be provided with the tools to do the job. The lay decision makers must be educated to a full awareness of the nature of the system which they are called upon to administer and their role within that system. The costs of the administration to the municipality must be realistically recognized and provided for in some manner rather than simply ignored. Technical resources for sophisticated analysis on an "as needed" basis must also be provided for the local decision makers. Finally, unlike the situation under the Inland Wetlands and Water Courses Act, provision should be made for an ongoing and effective review of town actions so that in fact the state policy is faithfully administered.

Russell L. Brenneman

Glastonbury, Connecticut.

Footnotes

1. Sec. 22a-42(c), Conn. Gen. Stats., Rev. of 1958, as amended.
2. Sec. 22a-42(c), Conn. Gen. Stats., Rev. of 1958, as amended.
3. Sec. 22a-42a(a), Conn. Gen. Stats., Rev. of 1958, as amended.
4. Sec. 22a-42a(b), Conn. Gen. Stats., Rev. of 1958, as amended.
5. Sec. 22a-42a(c), Conn. Gen. Stats., Rev. of 1958, as amended.
6. Sec. 22a-40(a), Conn. Gen. Stats., Rev. of 1958, as amended.
7. Sec. 22a-40(b), Conn. Gen. Stats., Rev. of 1958, as amended.
8. Sec. 22a-42a(c), Conn. Gen. Stats., Rev. of 1958, as amended.
9. Secs. 22a-41 and 22a-42a(d), Conn. Gen. Stats., Rev. of 1958, as amended.
10. Sec. 22a-42(b), Conn. Gen. Stats., Rev. of 1958, as amended.
11. "Model municipal regulations implementing the Inland Wetlands and Water Courses Act," Connecticut Department of Environmental Protection, March, 1974, revised October, 1975. Part I, Appendix B, Sec. 5.2.
12. Id. Sec. 5.3.
13. Id. Sec. 5.4.
14. Id. Sec. 5.5.
15. "Inland Wetland and Water Course Regulations," Town of Glastonbury, Connecticut, Part II, Appendix C, Sec. 5.2.
16. Sec. 22a-36, Conn. Gen. Stats., Rev. of 1958, as amended.
17. Sec. 22a-43, Conn. Gen. Stats., Rev. of 1958, as amended.

APPENDIX A

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TELEPHONE 767-8342

The Coastal Area Management Project of the Connecticut Department of Environmental Protection has asked me to prepare a report, as a consultant, on the feasibility of applying state inland wetlands law as a model for management of the coastal zone.

The Coastal Area Management Project is charged with carrying out the state's responsibilities under the federal Coastal Zone Management Act. Essentially this requires the evolution of long-term policy strategies for the coastal zone after very thorough exploration of what might be involved and ample discussion with communities along the shore. This process is only in its beginning stages and not even tentative conclusions have been reached.

My project is but a very small part of the whole effort to arrive at a better understanding of what roles various levels of government should play. Specifically, it arises out of recommendations by several planning agencies that the state inland wetlands law might provide a model for an infusion of state policy without removing the opportunity for basic decision making from the local community.

One aspect of my study will be to try to find out how the inland wetlands law is actually working. I shall be talking to representatives of the Department of Environmental Protection, but certainly the best source of information on this subject is the local inland wetland agency itself. Since I shall not be able to obtain this information from every community, I have selected, with the help of personnel in the Department of Environmental Protection, a sample of communities believed to represent a cross-section of inland wetland agencies statewide. Since my inquiry deals with the administration of the inland wetlands law generally, and not as related to shoreline towns, I have included in my sample towns which are not within the "coastal zone."

Your town and your agency can provide, in my judgment, some useful insights into how this law is working. I would appreciate an opportunity

APPENDIX B

November 10, 1975

to interview an informed person from your agency in the near future. No great time commitment will be involved. I should stress that the purpose of my study is not to evaluate your program or the inland wetlands law as such but rather to gain information which may be helpful in arriving at a judgment concerning whether or not that law would be useful if extended into another area.

You may expect to hear from either me or my secretary, Margaret Murphy, to set up a time when I can visit with you at a mutually convenient time.

Sincerely yours,

Russell L. Brenneman

RLB/mhm

Coastal Area Management Project

Inland Wetlands Analysis

Interview Sheet

Town of _____

Date: _____

Interviewer _____

Interviewee _____

Resource Commitments

1. What is the Inlands Wetlands Agency in your town?
2. Of what is its membership composed?
3. How are these members selected?
4. What amount of time on a man hours per month basis is contributed by these members?
5. What are the professional or other qualifications of members which appear to make them suitable for membership?
6. How frequently have you experienced a change in membership?
7. Do you have a budget? If so, what is your present budget on an annual basis?
8. Do you employ or have available to you paid staff?
9. On a man hour per month basis, how much paid staff time do you estimate is required for the operations of your agency?
10. What is the nature of your staff support?
11. Do you have available regular legal staff?

Adoption of Regulations

1. When did you adopt your inland wetlands regulations?
2. Were these regulations taken from a model found elsewhere or were they designed specifically to meet the needs of your town?
3. Describe the process by which these regulations were drafted and adopted.
4. Describe any citizen involvement that was part of the process.
5. Did you receive outside legal or technical assistance in the preparations of your regulations?
6. Did you receive or require any assistance from the State Department of Environmental Protection in the adoption of your regulations?
7. Did you receive or require any assistance from any other local agency in connection with the adoption of your regulations?

Designation of Wetlands

1. Have you completed the designation and mapping of your wetland areas?
2. Would you describe the procedures which you followed in designating your wetland areas?

3. With respect to designated wetland areas --
 - A. How many acres have been designated as wetlands?
 - B. What percent of the town does this area represent?
 - C. Would you describe the citizen support for, or opposition to, the designation process?
4. Did you receive, or require, any assistance from the Department of Environmental Protection in connection with this process?
5. Did you receive, or require, any assistance from any other government agencies in connection with this process?

Permit Process

1. At what point in the permit process are you first likely to have contact with an owner/developer?
2. Does a developer frequently seek a permit prior to final purchase of the property?
3. Must the developer invest funds on detailed plans before approaching the agency?
4. What informal discussion of development proposals takes place?
5. Who is notified?
6. Who attends?
7. How are decisions reached? Who participates? Are written decisions provided?
8. What are the workloads at each point in the process?

D. Were alternatives presented and considered?

15. How many applications have been denied? How many acres were involved?
16. How many applications are pending? What is their status?
17. How many appeals have been taken? Results?
18. What are the costs to developers, e.g. fees, time delays, costs of meeting conditions?
19. How many violations have occurred?
 - A. What action was taken?
 - B. What result?
20. How many requests for regulation or boundary changes have been made? What result?
21. To what extent is it common for an owner/property owner to modify his plans in response to "jawboning" with the agency?
22. Is it common for the agency to issue a conditional permit which allows some aspect of the development proposal but disallows other components?
23. Do you have legal assistance in connection with the permit process?
24. Do you receive, or require, any assistance from the Department of Environmental Protection in connection with the process?
25. Do you receive, or require, any assistance from any other government agency in connection with the permit process?

- A. Who does the work?
 - B. How much time elapses between points in the process?
 - C. What are the administrative costs?
9. How have workloads and time dimensions changed since the beginning of the program?
- A. How have personnel requirements changed?
 - B. How have administrative costs changed?
 - C. Has there been any agency morale change?
10. Is there any provision for monitoring the system?
11. Where, if at all, do "political" considerations enter into decision making?
12. How are violations of the permit system treated?
13. How many applications have been received?
- A. How many acres of wetlands do they involve?
 - B. What type of project is involved, e.g. single family residential, parking lot, multi-family housing, small commercial, large commercial, light industry, heavy industry? Agricultural or recreational uses? Schools?
14. How many applications have been granted?
- A. How many acres?
 - B. What type of activity?
 - C. What conditions were imposed?

General

1. What is the attitude of your town, if you can make a generalization, toward your agency and its activities?
2. From what sector does the greatest support for your activities appear to come?
3. From what sector does the greatest dissatisfaction with your activities come?
4. Do you feel that the way that the state inland wetlands law has been constructed and managed has been helpful to your town in the management of your inland wetlands resources?
5. Do you feel that your agency has adequate resources to make sound decisions in the area which has been entrusted to it?

APPENDIX C

INLAND WETLAND AND WATER COURSE REGULATIONS

TOWN OF GLASTONBURY, CONNECTICUT

SECTION 1: TITLE, AUTHORITY AND PURPOSE

- 1.1 These Regulations shall be known as the "Inland Wetland and Water Course Regulations, Town of Glastonbury, Connecticut", and are herein referred to as "these Regulations".
- 1.2 These Regulations are authorized by ordinance of the Glastonbury Town Council on January 8, 1973, and are adopted by the Glastonbury Conservation Commission in accordance with the provisions of Sections 22a-36 to 22a-45 of the Connecticut General Statutes, Revision of 1958, as amended.
- 1.3 The inland wetlands and water courses of the Town of Glastonbury are an indispensable and irreplaceable, but fragile, natural resource with which the citizens of the Town have been endowed. The wetlands and water courses are an inter-related web of nature essential to an adequate supply of surface and underground water; to hydrological stability and control of flooding and erosion; to the re-charging and purification of ground water; and to the existence of many forms of animal, aquatic and plant life. Many inland wetlands and water course have been destroyed or are in danger of destruction because of unregulated use by reason of deposition, filling or removal of material, the diversion or obstruction of water flow, the erection of structures and other uses, all of which have despoiled, polluted, and eliminated wetlands and water courses. Such unregulated activity has had, and will continue to have, a significant adverse impact on the environment and ecology of the Town of Glastonbury and has and will continue to imperil the quality of the environment thus adversely affecting the ecological, scenic, historic and recreational values and benefits of the Town for its citizens now and forever more. The preservation and protection of the wetlands and water courses from random, unnecessary, undesirable and unregulated uses, disturbance or destruction is in the public interest and is essential to the health, welfare and safety of the citizens of Glastonbury. It is, therefore, the purpose of these Regulations to protect the citizens of the Town by making provisions for the protection, preservation, maintenance and use of the inland wetlands and water courses by minimizing their disturbance and pollution; maintaining and improving water quality in accordance with the highest standards set by Federal, State or local authority; preventing damage from erosion, turbidity or siltation; preventing loss of fish and other beneficial aquatic organisms, wildlife and vegetation and the destruction of the natural habitats thereof; deterring and inhibiting the danger of flood and pollution; protecting the quality of wetlands and water courses for their conservation, economic, aesthetic, recreational and other public and private uses and values; protecting the State's potable fresh water supplies from the dangers of overdraft, drought, pollution, misuse and mismanagement; providing an orderly process to balance the need for the economic growth of the Town and the use of its land with the need to protect its environment and ecology in order to forever guarantee to the people of the Town, the safety of such natural resources for their benefit and enjoyment and for the benefit and enjoyment of generations yet unborn.

Section 2: Definitions

2.1 Certain words, terms and phrases used in these Regulations shall have the meanings presented in this section. All words used in the present tense include the future tense, and the word "land" shall be deemed to include "designated, incidental, or arranged to be used".

2.1.1 "Bog" means a poorly drained area containing an accumulation of organic material and characterized by an association of plants recognized as bog species. Typical examples of bog species are listed in the Connecticut Department of Environmental Protection booklet entitled Inland Wetland Plants of Connecticut (May, 1973).

2.1.2 "Commission" means the Conservation Commission of the Town of Glastenbury, Connecticut, presently located in the Office of Community Development.

2.1.3 "Deposit" includes, but shall not be limited to, fill, grade, dump, place, discharge or emit.

2.1.4 "Discharge" means the emission of any water, substance or material into waters of the Town of Glastenbury whether or not such substance causes pollution.

2.1.5 "Disturbing the natural and indigenous character of the land" means that the activity will significantly disturb the inland wetland or water course by removal or deposition of material, will cause the alteration or obstruction of water flow, or will result in the pollution of the wetland or water course.

2.1.6 "Harmful thermal effect" means any significant change in the temperature of any waters resulting from a discharge therein, the magnitude of which temperature change does or is likely to render such waters harmful, detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational or other legitimate beneficial uses, or to livestock, wild animals, birds, fish or other aquatic life.

2.1.7 "License" means the whole or any part of a permit, certificate of approval or similar form of permission which may be required of any person by the provisions of these Regulations or Sections 22a-35 to 22a-45 of the Connecticut General Statutes, Revision of 1958, as amended.

2.1.8 "Marsh" means an area normally covered with shallow water, subject to seasonal variations, that contains an association of herbaceous, soft-stemmed plants recognized as marsh vegetation. Typical examples of marsh species are listed in the Connecticut Department of Environmental Protection booklet entitled Inland Wetland Plants of Connecticut (May, 1973).

2.1.9 "Material" means any substance, solid or liquid, organic or inorganic, including, but not limited to, soil, sediment, aggregate, sand, gravel,

any, firm, individual, partnership, corporation,

2.1.10 "Area" means any parcel, land, farmstead, corporation, company, organization or legal entity or any land including municipal corporations, governmental agencies or individuals thereof.

2.1.11 "Pollution" means the contamination or rendering useless or impure, or prejudicial to public health of any waters of the Town of Gloucester by means of any waste or other materials discharged or deposited therein by any public or private sewer or otherwise so as directly or indirectly to come in contact with any waters.

2.1.12 "Regulated Activity" means any permanent or temporary operation within or use of a wetland or water course involving removal or deposition of material or any alteration, construction in, alteration or pollution of such wetland or water course, but shall not include the work in Section 3 of these Regulations.

2.1.13 "Regulated Area" means any wetland or water course as defined in these Regulations, and is shown on the "Inland Wetlands and Water Course Map for the Town of Gloucester, Massachusetts", or an alternative established as such by the Commission in accordance with these Regulations.

2.1.14 "Structure" includes, but shall not be limited to, dam, dike, levee, pier, dyke, bridge, such, building, structure, or float.

2.1.15 "Unauthorized removal or deposit" means any removal of the physical, chemical or biological properties of any of the waters of the Town of Gloucester including, but not limited to, dredging, cutting, filling or filling.

2.1.16 "Any activity having a significant effect" means:

- a. Any activity involving a deposition and/or removal of material which will cause loss or substantial adverse effects on the regulated area or on other part of the inland wetland or water course system or
- b. Any activity which substantially changes the natural channel or way of flow the natural dynamics of a water course system or
- c. Any activity which substantially diminishes the natural capacity of an inland wetland or water course to support desirable biological life, prevent flooding, supply water, assimilate waste, facilitate wildlife, and/or provide recreation and open space or
- d. Any activity which would result in degrading a water course or the surface and/or ground water of an inland wetland, or the degradation to be measured by standards of the Water Compliance Division of the Commonwealth Department of Environmental Protection, where applicable.

- 2.1.17 "Soft Sediment" means an sediment only qualified in accordance with standards set forth in Section 22 of these Regulations.
- 2.1.18 "Swamp" means an area with a water table at or near the surface of the ground throughout most of the year and containing vegetation dominated by an association of trees and/or shrubs recognized as swamp species. Typical examples of swamp species are listed in the Connecticut Department of Environmental Protection booklet entitled Inland Wetland Plants of Connecticut (May, 1973).
- 2.1.19 "Waste" means sewage or any substance, liquid, gaseous, solid, or radioactive, which may pollute or tend to pollute any of the waters of the Town of Glastonbury.
- 2.1.20 "Water Courses" means rivers, streams, brooks, waterways, lakes, ponds, marshes, swamps, bogs and all other bodies of water, natural or artificial, public or private, which are contained within, flow through, or border on the Town of Glastonbury or any portion thereof, not regulated as tidal wetlands pursuant to Sections 22a-28 through 22a-35 of the Connecticut General Statutes, Revision of 1958, as amended.
- 2.1.21 "Wetlands" means land, including submerged land, not regulated as tidal wetlands pursuant to Sections 22a-28 through 22a-35 of the Connecticut General Statutes, Revision of 1958, as amended, which consists of any of the soil types designated as poorly drained, very poorly drained, alluvial and flood plain by the National Cooperative Soil Survey (as may be amended from time to time) of the United States Department of Agriculture, Soil Conservation Service.

SECTION 3: PERMITTED OPERATIONS AND USES

- 3.1 The following are permitted uses in inland wetlands and water courses, as of right:
- 3.1.1 Grazing, farming, nurseries, gardening, and harvesting of crops and farm ponds of three acres or less.
- 3.1.2 A residential home (i) for which a building permit has been issued or (ii) on a subdivision lot, provided the permit has been issued or the subdivision has been approved as of the effective date of promulgation of these Regulations.
- 3.1.3 Boat anchorage or mooring.
- 3.1.4 Uses incidental for the enjoyment and maintenance of a residential property, such property defined as the largest minimum residential lot site permitted anywhere in the Town of Glastonbury (30,000 square feet).
- 2.1.19 Such incidental uses shall include maintenance of existing structures and landscaping but shall not include removal or deposition of substantial amounts of material from or into a wetland or water course, or diversion or alteration of a water course.
- 2.1.20

- 4.5 The Commission of the Connecticut Department of Environmental Protection shall regulate the following activities:
- 4.5.1 Construction or modification of any dam, pursuant to Sections 25-110 and 25-112 of the General Statutes, as amended.
 - 4.5.2 Construction or placement of any structure or obstruction within channel encroachment lines, pursuant to Sections 25-4a to g of the General Statutes as amended.
 - 4.5.3 Construction or placement of any structure or obstruction within tidal, coastal and navigable waters, pursuant to Sections 25-7b to e of the General Statutes as amended.
 - 4.5.4 Diversion of river water for public and domestic use, pursuant to Sections 25-5a to c of the General Statutes, as amended.
 - 4.5.5 Discharge into waters of the State, pursuant to Section 25-54a of the General Statutes, as amended.
- 4.6 Each applicant to undertake an activity specified in Section 4.5 of these Regulations shall be submitted to the Commissioner of the Connecticut Department of Environmental Protection and processed in accordance with the statutes, regulations, and procedures which are applicable to the proposed activity.
- 4.6.1 If any application submitted pursuant to Section 4.6 of these Regulations includes a regulated activity as defined in Section 4.3 of these Regulations, the Commissioner of the Connecticut Department of Environmental Protection may direct the applicant to submit such portion of the application to the Commission.
 - 4.6.2 If the Commission receives an application for an activity specified in Section 4.5 of these Regulations, it shall in writing direct the applicant to apply to the Commissioner of the Connecticut Department of Environmental Protection for the required permit. The Commission may, in its discretion, review the remaining portions of the application, or may deem such an application incomplete until the Commissioner of the Connecticut Department of Environmental Protection issues a decision concerning any related application subject to his jurisdiction.
- 4.7 Commission members and their agents or any specialists used by the Commission to evaluate permit applications under these Regulations, shall have the right of free access to those parts of the property under consideration. The property owner may require that such persons have a letter of authorization from the Chairman of the Commission prior to permitting such access.
- 4.8 The Commission shall maintain directly, or through a designated agent, general surveillance of the regulated areas within the town of Glastonbury to ensure that no unauthorized regulated activities occur.
- 4.9 The Commission shall establish, amend, change or repeal these Regulations including boundaries of inland wetland and water course areas in the following manner:

- 3.1.5 Construction and operation, by water companies, as defined in Section 16-1 of the Connecticut General Statutes, Revision of 1958, as amended, or by Municipal Water Supply Systems as provided for in Chapter 102 of the Connecticut General Statutes, Revision of 1958, as amended, of dams, reservoirs and other facilities necessary to the impounding, storage and withdrawal of water in connection with public water supplies, except as provided in Sections 25-110 and 25-112 of the Connecticut General Statutes, Revision of 1958, as amended.
- 3.2 The following operations and uses shall be permitted, as non-regulated uses in inland wetlands and water courses provided they do not disturb the natural and indigenous character of the land:
- 3.2.1 Conservation of soil, vegetation, water, fish, shellfish, and wildlife.
- 3.2.2 Outdoor recreation including play and sporting areas, golf courses, field trails, nature study, horseback riding, swimming, skin diving, camping, boating, water skiing, trapping, hunting, fishing and shell-fishing where otherwise legally permitted and regulated.

SECTION 4. GENERAL PROVISIONS

- 4.1 No person shall henceforth conduct a regulated activity in a regulated area of the Town of Glastonbury without first obtaining a permit for such activity from the Commission.
- 4.2 Subject to the provisions of Sections 3, 4.3 and 4.5 hereof, regulated activities affecting wetlands and water courses are prohibited except as they may be licensed by the Commission.
- 4.3 The Commission shall regulate only those activities which:
- a. Remove material from,
 - b. Deposit material in,
 - c. Obstruct,
 - d. Construct in,
 - e. Alter, or
 - f. Pollute
- inland wetlands and water courses.
- 4.4 The map of regulated areas, entitled "Inland Wetlands and Water Courses Map, Town of Glastonbury, Connecticut" shall be available for inspection in the Town Clerk's Office. The Commission shall update the map as it deems necessary.

- 3.1.5 Construction and operation, by water companies, as defined in Section 16-1 of the Connecticut General Statutes, Revision of 1958, as amended, or by Municipal Water Supply Systems as provided for in Chapter 102 of the Connecticut General Statutes, Revision of 1958, as amended, of dams, reservoirs and other facilities necessary to the impounding, storage and withdrawal of water in connection with public water supplies, except as provided in Sections 25-110 and 25-112 of the Connecticut General Statutes, Revision of 1958, as amended.
- 3.2 The following operations and uses shall be permitted, as non-regulated uses in inland wetlands and water courses provided they do not disturb the natural and indigenous character of the land:
- 3.2.1 Conservation of soil, vegetation, water, fish, shellfish, and wildlife.
- 3.2.2 Outdoor recreation including play and sporting areas, golf courses, field trails, nature study, horseback riding, swimming, skin diving, camping, boating, water skiing, trapping, hunting, fishing and shell-fishing where otherwise legally permitted and regulated.

SECTION 4. GENERAL PROVISIONS

- 4.1 No person shall hereafter conduct a regulated activity in a regulated area of the Town of Glastonbury without first obtaining a permit for such activity from the Commission.
- 4.2 Subject to the provisions of Sections 3, 4.3 and 4.5 hereof, regulated activities affecting wetlands and water courses are prohibited except as they may be licensed by the Commission.
- 4.3 The Commission shall regulate only those activities which:
- a. Remove material from,
 - b. Deposit material in,
 - c. Obstruct,
 - d. Construct in,
 - e. Alter, or
 - f. Pollute
- inland wetlands and water courses.
- 4.4 The map of regulated areas, entitled "Inland Wetlands and Water Courses Map, Town of Glastonbury, Connecticut" shall be available for inspection in the Town Clerk's Office. The Commission shall update the map as it deems necessary.

4.9.1 No regulation of the Commission including the design of inland wetland or water course areas shall become effective or be established, amended, changed or repealed until after public hearing in relation thereto is held by the Commission, at which parties in interest and citizens shall have an opportunity to be heard. Notice of the time and place of such hearing shall be published for the first of a legal advertisement, appearing in a newspaper having a general circulation in the Town of Glastonbury at least twice at intervals of not less than two (2) days, the first not more than thirty-five (35) days nor less than fifteen (15) days, and the last not less than two (2) days before such hearing, and a copy of such proposed regulation or boundaries shall be filed in the Office of the Town Clerk, for public inspection at least ten (10) days before such hearing, and may be published in full in such paper.

4.9.2 Such regulations and inland wetland and water course boundaries shall be effective only upon an affirmative vote of a majority of the Commission in favor and at such time as is fixed by the Commission. A copy of the regulations and boundaries in effect shall be filed in the Office of the Town Clerk. Whenever the Commission establishes, amends, changes or repeals such regulations or boundaries, it shall state upon its records the reasons for its action.

4.9.3 All petitions, submitted in writing and in a form prescribed by the Commission, requesting a change in the regulations or the boundaries of inland wetland or water course areas shall be considered as a public hearing in the manner provided for in Section 4.9.1 of these Regulations within sixty (60) days after receipt of such petition. The Commission may, at any time, summarily and approve the changes proposed in such petition within sixty (60) days after the filing. The petitioner may consent to extension of the public hearing for a hearing and for adoption or denial or may withdraw such petition. The Commission shall inform the petitioner of its decision within five (5) days of the date of such decision, and the Commission shall cause notice of its decision to be published in a daily newspaper having a general circulation in the Town of Glastonbury within five (5) days of the date of such decision.

4.9.4 The Commission may require a filing fee to be deposited with it to defray the cost of publication of the notice required for a hearing.

4.10 **Wetland Courses and Wetlands:** Water courses and wetlands are defined in Section 2.1.20 and 2.1.21 of these Regulations.

4.10.1 If an applicant disputes the designation of any part of his land as a wetland or water course, or submits an application for a change in the boundaries of such area, the applicant may be required to produce such information as the Commission deems necessary to provide an informed decision, but in no case shall the Commission impose an unreasonable burden of proof.

4.10.2 To meet the burden of proof for or against any area designated by these Regulations, the applicant may be directed to present data submitted by a Soil Scientist

4.9.3

the Commission shall have the right to require the applicant to provide such information as the Commission may deem necessary to permit an informed decision (including, but not limited to, that of a professional biologist, ecologist, geologist, and hydrologist). In no case shall the Commission impose an unreasonable burden of proof.

5.1.1. APPLICATION REQUIREMENTS

5.1 Any person wishing to carry out any regulated activity in a regulated area must submit an application to the Commission in care of the Office of Community Development, at the Town of Washington. Any person may at any time request the Commission to issue a declaratory ruling as to whether a proposed activity is within the Commission's jurisdiction under these Regulations and is, therefore, subject to the permit application requirements contained herein. If the Commission finds, on the basis of submitted evidence (including any such site plan as the Commission requires), that a proposed activity or use does not involve a regulated activity in a regulated area, no application for a permit for such activity shall be required. Any such ruling shall be subject to modification or revocation if it is later shown that a regulated activity in a regulated area is a consequence of that proposed activity or use.

5.1.1 All applications shall be submitted to a form prescribed by the Commission, and shall contain such information as the Commission deems necessary for a full consideration of the activity. The Commission shall review all applications of such activity without unreasonable delay. No application shall be considered complete until the Commission has informed the applicant in writing of the complete list of required information and such be submitted at least two weeks prior to their consideration.

5.1.2 The information required by the Commission shall be furnished in no more than five (5) copies.

5.1.3 All information submitted in the application for review shall be confidential except, in the case of regulated activity, including. A listing shall be of the applicant or any of his, her, or his agents to provide certain information, on performance, including the levels of activity submitted, shall be sufficiently guarded for the revelation of any permit under these Regulations, and/or for purposes to be imposed pursuant to Section 5.1.2 of these Regulations. Each copy of information or evidence shall be considered as a separate document.

5.2 (Class A Activity) If the Commission finds, on the basis of submitted evidence, that a proposed activity or use is a regulated activity not having a significant impact on water quality, or is listed in Section 2.1.1.6 of these Regulations as the regulated area, then, under a Class A permit for such activity or use

5.3.2 The site map shall be prepared by a licensed land surveyor or professional engineer or architect registered in the State of Connecticut. Five (5) copies of the site map shall be submitted, and they shall be drawn at a scale of 1" = 40'. All maps shall consist of at least 24 inches by 36 inches and no larger than 25 inches by 37 inches. The site map shall include, but need not be limited to, the following:

5.3.3 Site Map - The site map shall be prepared by a license of land surveyor or professional engineer or architect registered in the State of Connecticut. Five (5) copies of the site map shall be submitted, and they shall be drawn at a scale of 1" = 40'. All maps shall consist of at least 24 inches by 36 inches and no larger than 25 inches by 37 inches. The site map shall include, but need not be limited to, the following:

- a. Name of applicant.
- b. Name of landowner (if different from applicant).
- c. Name and address of licensed land surveyor, professional engineer, or architect.
- d. Date of map and map number or identification.
- e. Certificate of Connecticut registered land surveyor, under seal to the effect that the map conforms to Class 12 survey requirements.
- f. Statement by licensed land surveyor, professional engineer or architect reading: "The United Wetland and Watercourse Regulations of the Town of Glastonbury are a part of this map and approval of this map is contingent on compliance with all requirements of said Regulations."
- g. Location map in inset, scale: 1" = 1000'.
- h. North arrow.
- i. Name and location of landowners within 200' of the proposed activity.
- j. Existing and proposed boundary and lot line, with dimensions given in feet and acres given in square feet. Existing and proposed easements and rights of way for public utilities and other public uses with dimensions given in feet. Bearings, angles, and curve data with arc lengths will be given.
- k. Location of all wetlands and watercourses on the property and within 200 feet thereof beyond the property line, and the extent of proposed changes in their configuration.
- l. Location of proposed activities.
- m. Elevation, at two-foot contour intervals. If deposition, removal, or grading of materials are proposed, resulting elevations shall be shown by two-foot contour intervals.

6.1.1 continued
including the Salt and Water Control Committee and/or the
Consistent Department of the Environment.

6.1.2 Additional requested information

6.1.4 All relevant facts and circumstances, including but not limited to,
the following:

- a. The environmental impact of the proposed action, including the effects on the natural capacities of the inland wetland or water course to support desirable biological life to prevent flooding, to supply water, to control sediments, to facilitate drainage and to promote public health and safety.
- b. The consideration of the alternatives to the proposed action which might better enhance environmental quality or have a less detrimental effect and which could feasibly attain the basic objectives of the activity. This should include, but not be limited to the alternative to taking no action, or postponing action pending further study, the alternative of requiring actions of different nature which would provide similar benefits with different environmental impacts, such as using a different location for the activity.
- c. The relationship between the short term uses of the environment and the maintenance and enhancement of long term productivity, including consideration of the extent to which the proposed activity involves trade offs between short and long term goals of the region of long term losses or damage, and consideration of the extent to which the proposed action involves future impacts.
- d. Unavoidable or undesirable consequences of measures which would be involved in the proposed activity.
- e. The character and degree of injury to, or interference with, safety, health or the reasonable use of property which would be caused or threatened. This includes recognition of potential damage from erosion turbidity or siltation, loss or fish and other beneficial aquatic organisms, wildlife and vegetation, the dangers of flooding and pollution, and destruction of the aesthetics or historic, recreational and other public and private uses and values of wetlands and water courses.
- f. The suitability of such action to the area for which it is proposed. This requires the Commission to balance the need for the economic growth of the Town and the use of its land with the need to protect the environment for the people of the Town and the benefit of generations yet unborn.

6.1.5 Measures which would mitigate the impact of the proposed activity and any health and environmental impacts. Such measures include the availability of further technical information and measures which could be taken to mitigate the impact of the proposed activity on the natural capacity of the wetland or water course to support

d. An identification of the soils, including the location of any soil building or soil erosion. Soil types shall be described in accordance with classifications established by the National Cooperative Soil Survey of the United States Department of Agriculture, Soil Conservation Service.

e. A general delineation of the vegetative cover of any regulated area.

f. Location of existing and proposed on-site sewage and water supply facilities.

g. Wherever waters are impounded, existing and proposed depths of water and high water level for all inundated areas.

r. Location of aquifers.

5.3.2 Supplemental Report - Accompanying the site map (s) will be a written report providing a detailed explanation of the mapped material. Additional information may include, but need not be limited to, the following data:

a. The existing and anticipated salinity/acidity level (pH), turbidity, bacteric count, flows, odor, color, dissolved oxygen content, temperature and taste of affected water, both above and below the ground surface.

b. Detailed soils information consistent with Soil Conservation Service regulations. Data may include, but need not be limited to:

1. Soil types.

2. Percolation rates.

3. Soil saturated with water within 3 feet of the surface for 242 months.

4. Soil saturated with water within 3 feet of the surface for less than 2 months.

5. Slope stability.

6. Erosion and sedimentation problems and their solution.

7. Soil strength and suitability for construction purposes.

c. Detailed geologic information. Data may include, but need not be limited to:

1. Outcrops.

2. Depth to bedrock.

3. Erosion type.

In the event the Commission does not schedule a public hearing, the Commission shall render a final decision within sixty (60) days from the receipt of a complete application. An application shall not be deemed complete until the Commission has determined that it has received all information requested pursuant to Section 5.3 of these Regulations and so notified applicants in writing. The Commission shall notify the applicant by certified mail of its decision within five (5) days of the date of the decision and the Commission shall cause notice to be published in a daily newspaper having a general circulation in the Town of Glastonbury and in adjacent towns in which the affected wetlands and water courses are located.

Public Hearing. All public hearings shall commence no sooner than thirty (30) days nor later than sixty (60) days after the receipt of a complete application.

Notice of the time and place of such hearing shall be published in the form of a legal advertisement appearing in a newspaper having a general circulation in the Town of Glastonbury and in each municipality where the affected wetlands or water courses are located. Notice of the hearing shall be published at least once not more than thirty (30) days and not fewer than ten (10) days before the hearing. All applications and maps and documents relating thereto shall be open to public inspection at the Commission's office in the Office of Community Development. Hearing notices shall be sent to the applicant adjacent property owners and the Chief Executive Officer of the Town wherein the wetland or water course lies.

While possible public hearings shall be completed in a single session. However the hearing may be continued (to a date certain) where necessary for the full development of the evidence, or for the full and adequate participation of the parties, or for such other substantial purposes. In no case shall continuances be used as a device for delay.

5.5 The Commission may submit one (1) copy each of the application for review to qualified agencies including, but not limited to:

5.5.1 The Hartford County Soil and Water Conservation District,

5.5.2 The Connecticut Department of Environmental Protection; or

5.5.3 The Chief Executive Officer of the Town wherein the wetland or water course lies.

Failure to receive a written reply, except as specified in Section 4.6.2 of these Regulations, shall not delay a public hearing or prejudice the final decision.

SECTION 6: FINAL DECISION AFTER PUBLIC HEARING

6.1 The Commission shall consider the following in making its final decision on a permit application.

6.1.1 All evidence offered at or before any public hearing.

6.1.2 Any reports from other commissions and/or federal or state agencies.

1. Structural characteristics of the site.
 2. Availability of ground water.
 3. Existence and location of aquifers.
 4. Overburden types.
- d. An evaluation of the extent of the presence of plant species and wildlife associated with the area and an analysis of the probable effect of the proposed activity upon these plant species and upon indigenous animal life.
 - e. A description of any materials to be deposited on the affected property in terms of volume, composition, and the possibility of erosion or leaching from deposited materials. The applicant may also be required to estimate the probable environmental impact on the affected wetlands or water course.
 - f. A description of the proposed construction activities including, but not limited to, existing and proposed structures, water mains, gas mains, power and telephone lines, streets, sidewalks, sanitary sewer pipes and structures, and drains, pipes, and silt and retention basins. Such a description should include detailed blueprints, engineering and architectural plans or designs. Such a description should include the purpose of such construction or activity.
 - g. A list of other property owners whose rights or interests may be or will be affected by the proposed activity and the location of these properties.
 - h. If the proposed activity may affect a water course or wetland lying within, partly within, or flowing through, or adjacent to the affected property, a form when relevant to the proposed character and the projected impact upon the water course or wetland. This may include, but need not be limited to:
 1. Extent of drainage areas affected.
 2. Low and high flow periods (including mean flow).
 3. Proposed discharge.
 4. Flooding.
 5. Recharge and/or discharge of groundwater.
 6. Alteration of flow characteristics.
 7. Amounts of expected erosion and sedimentation.
- 5.4 If the Commission finds, on the basis of the evidence before it, that a regulated activity is involved which may have significant impact or major effect on the inland wetlands or water course, the Commission may decline such proposal for further investigation and public hearing.

6.1.5 Continued:

desirable biological life, provide floodings, supply water, control sedimentation and/or provide erosion, control water, facilitate drainage, and provide recreation and open space.

6.1.6 The extent to which the exercise of property rights and the public benefit derived from such use may or may not outweigh or justify the possible degradation of the inland wetland or water course, the interference with the exercise of other property rights, and the impairment or endangerment of public health, safety or welfare.

6.2 Action shall be taken on applications within forty-five (45) days after the completion of a public hearing. The Commission shall inform the applicant of its decision in granting (with or without conditions) or in denying a permit by certified mail within five (5) days of the date of such decision. The Commission shall cause notice of the issuance or denial of a permit to be published in a daily newspaper having a general circulation in the Town of Glastonbury.

SECTION 7: THE PERMIT

7.1 The Commission may grant a permit, grant a permit with conditions or limitations, or deny a permit. The Commission shall affix the date of approval for a permit on the application and accompanying site maps, and shall endorse said application and site maps with the signatures of the Chairman.

7.2 The Commission may deny a permit with or without prejudice. If a permit is denied with prejudice, the application shall not be resubmitted for one year following the date of such denial. If a permit is denied without prejudice, the applicant may modify, amend, or correct the proposal. The rejection of a modified proposal shall be equivalent to the denial of an application for the purposes of Section 8 of these Regulations.

7.3 If a permit is granted with conditions or limitations, and the applicant disagrees with such conditions or limitations, he may modify, amend or correct his proposal. Rejection of a modified, amended or corrected proposal shall be equivalent to the denial of an application for the purposes of Section 8 of these Regulations.

7.4 Initiation of activity under a permit shall be within one year of the granting of the permit, unless the time period is extended by the Commission.

7.5 No permit may be assigned or transferred without the written consent of the Commission.

SECTION 8: APPEALS

8.1 Any person aggrieved by any regulation, order, decision or action made by the Commission pursuant to these Regulations may appeal to the Court of Common Pleas for Hartford County within fifteen (15) days after publication of such Regulation, order, decision or action. All appeals shall follow the procedure outlined in Section 9 of the Inland Wetlands and Water Courses Act, Section 22a-43 of the Connecticut General Statutes, Revision of 1956, as amended.

SECTION 9: OTHER PERMITS AND LICENSES

- 9.1 Nothing in these Regulations shall obviate any requirement for the applicant to obtain any other assent, permit or license required by law or regulation of the Government of the United States or of the State of Connecticut or any political subdivision thereof including the Building Zone Regulations of the Town of Clantonbury. The obtaining of such assents, permits, or licenses is solely the responsibility of the applicant.

SECTION 10: FEES

- 10.1 There is no fee for a permit.
- 10.2 Application fee schedule:
- | | | |
|--------|--|---------|
| 10.2.1 | Declaratory Ruling | No Fee |
| 10.2.2 | Class A Application | \$5.00 |
| 10.2.3 | Class B Application | \$20.00 |
| 10.2.4 | Application to amend Inland Wetland or Water Courses Map | \$15.00 |

SECTION 11: ENFORCEMENT

- 11.1 In the performance of its duties under Regulations, the Commission by a representative, at all reasonable times may enter upon any public or private property, except a private residence, for the purpose of inspection and investigation to ascertain possible violations of these Regulations. The property owner may require that such persons have a letter of authorization from the Chairman of the Commission prior to permitting such access.
- 11.2 (a) Any person who commits, takes part in or assists in any violation of any provision of these Regulations shall be fined not more than one thousand dollars (1,000) for each offense. Each violation shall be a separate and distinct offense, and, in the case of a continuing violation, each day's continuance thereof shall be deemed to be a separate and distinct offense. All costs, fees and expenses in connection with such action shall be assessed as damages against the violator.
- (b) If the Commission determines that any person is engaging in any regulated activity without a proper permit, or is materially exceeding the conditions or limitations placed on his permit or the scope of work as set forth in the application, or has obtained a permit through deception or through inaccurate information as to either the activity or its environmental impact, or has engaged or is engaging in any other violation of these Regulations or that the activity for which a permit has been granted has had a more severe impact or effect on the inland wetland or water course than was projected by the permittee, the Commission shall issue a notice of hearing to the permittee, including specification of the facts or conduct which warrant such hearing, at which hearing the permittee shall have the opportunity to show compliance with these Regulations and the requirements for retention of the permit, and thereafter take one or more of the following steps:

- i. Revoke or suspend the permit if the Commission determines that the conditions or limitations set forth in the permit have not been complied with or that the scope of the work set forth in the application for the permit has been exceeded; and/or
- ii. Bring an action in Superior Court pursuant to Section 22a-44 of the Connecticut General Statutes, as the same may be amended, for the collection of fines and penalties, together with all costs, fees and expenses of such collection; and/or
- iii. In the case of a continuing violation, bring an action in the Superior Court pursuant to said Section 22a-44, as the same may be amended, for an order restraining such continuing violation, and for such order directing that the violation be corrected or removed as the Commission deems necessary and appropriate to the protection of the inland wetlands and water courses; and for the costs, fees and expenses of such action.

11.3 In the event that the Commission shall suspend or revoke a permit pursuant to Section 11.2.b (i) above, the permittee shall be notified of the Commission's decision by certified mail and the Commission shall cause notice of its order of revocation or suspension of a permit to be published in a newspaper having a general circulation in the Town and in any municipality whose border lies within five-hundred (500) feet of the affected wetland or water course, all within five (5) days of the date of the decision.

11.4 Except for any costs, fees or expenses which have been assessed as damages, all moneys collected pursuant to this section shall be maintained in a separate account and shall be used by the Commission to restore the affected wetlands or water courses to their condition prior to violation, wherever possible.

11.5 All parties may, subject to the ruling of the Commission, request summonses and examinations of witnesses; cross-examine witnesses; introduce records, papers, documents, or other evidence into the record; and submit oral arguments and file briefs for the purpose of showing compliance with requirements for retention of a permit and for the purpose of showing the absence of any violation.

11.6 At all hearings held pursuant to this section, all aggrieved persons shall have the right to intervene and present evidence.

11.7 Nothing in these Regulations shall be construed as limiting or excluding such other remedies as are available to the Commission for the protection of inland wetlands and water courses.

SECTION 12: QUALIFICATIONS OF SOIL SCIENTISTS

12.1 The Commission may prepare and publish a list of those soil scientists in the State who qualify in accordance with the standards set forth below:

12.1.1 A full 4-year course of study in an accredited college or university leading to a bachelor's or higher degree with major physical, or

APPENDIX D

APPLICATION FOR PERMISSION TO
CONDUCT A REGULATED ACTIVITY
WITHIN AN INLAND WETLAND OR
WATER COURSE AREA IN THE CITY
OF NORWICH

Date _____
Filed: _____
App. # _____

(In accordance with Sections 22a-36 to 45, inclusive of the General Statutes, as amended, and the regulations of the Norwich Inland Wetlands and Water Courses Commission)

INSTRUCTIONS:

All applicants must complete Section I of this application form for preliminary review. The Commission will then notify the applicant of any additional information that may be required and will schedule a public hearing, if necessary. In addition to the information supplied in Section I, the applicant may submit other supporting facts or documents which may assist the Commission in its evaluation of this proposal.

SECTION I

1. Name of Applicant _____
Home Address _____
Business Address _____
Telephone # _____
 2. Applicant's Interest in the Property
_____ Owner _____ Lessee _____ Lessor _____ Other _____
 3. Name of Property Owner (if not applicant) _____
Home Address _____
Business Address _____
Telephone # _____
 4. Attach a written, witnessed consent to the proposed activity by the owner, if applicant is not the property owner.
 5. Geographical Location of the Property
 - a. This property may be reached from _____
by proceeding (north) (east) on Route No. _____
(south) (west)_____ and the following specific directions:
- (Use an additional sheet, if necessary, to draw a sketch showing the property in relation to surrounding roads.)

- b. Lot number (or other designation) as shown on the Tax Assessor's Map (Zoning Map, Subdivision Map, etc.) _____

Specify map source _____

6. Purpose and Description of Activity for Which Authorization is Requested.

- a. Proposed activity will involve the following within inland wetland or water course area (Check appropriate box or boxes):

_____ alteration _____ Construction _____ deposition of material

_____ pollution _____ removal of material

- b. Attach a general description of the proposal and identification of each regulated activity for which a permit is sought. Include nature and volume of material to be placed, removed, or transferred.
- c. Attach a sketch showing location of proposed activity on property.
- d. Please submit a detailed plan of the proposal, if available at this time.
- e. Purpose of the proposed activity (i.e., addition to existing dwelling, new business, industrial park, etc.):

7. Names and Addresses of Adjacent Property Owners (attach separate sheet)

8. The Property to be Affected by the Proposed Activity Contains a:

_____swamp _____marsh _____bog: _____lake or pond

_____stream or river _____flood plain _____other regulated area describe

13.

The undersigned applicant hereby consents to necessary and proper inspections of the above-mentioned property by Agents of the Norwich Inland Wetlands and Water Courses Commission, at reasonable times, both before and after the permit in question has been granted by the Commission.

The undersigned swears that the information supplied in the completed application is accurate, to the best of his knowledge and belief.

by _____
Signature of Applicant

Date Application Filed

